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code of federal regulations

Public Welfare

COMPLETED

45

PARTS 200 TO 499

Revised as of October 1, 1981

022-003-94675-6

code of federal regulations

Public Welfare

45

PARTS 200 TO 499

Revised as of October 1, 1981

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Table of Contents

	Page
Explanation	v
Title 45:	
Subtitle B—Regulations Relating to Public Welfare—(Continued):	
Chapter II—Office of Family Assistance (Assistance Programs), Department of Health and Human Services	3
Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services	153
Chapter IV—Office of Refugee Resettlement, Department of Health and Human Services	197
Finding Aids:	
Table of CFR Titles and Chapters	205
Alphabetical List of Agencies Appearing in the CFR	219
Redesignation Tables	227
List of CFR Sections Affected	229

Cite this Code **CFR**

thus: **45 CFR 201.0**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..... as of January 1
Title 17 through Title 27 ..... as of April 1
Title 28 through Title 41 ..... as of July 1
Title 42 through Title 50 ..... as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1981.

THIS TITLE

Title 45—PUBLIC WELFARE is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1–199, 200–499, 500–1199, and 1200 to end. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of October 1, 1981.

Those amendments to Part 801—Voting Rights Program, Appendixes A, B, and D, which apply to Texas also appear in Spanish following Appendix D.

For this volume John A. Roberts was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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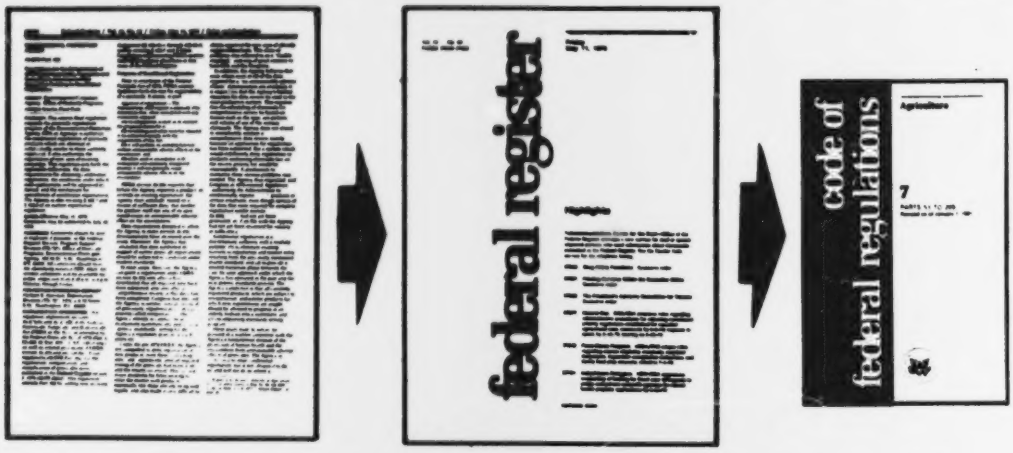

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Title 45—Public Welfare

(This book contains Parts 200 to 499)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE—(Continued)

	Part
CHAPTER II—Office of Family Assistance (Assistance Programs), Department of Health and Human Services	201
CHAPTER III—Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services	301
CHAPTER IV—Office of Refugee Resettlement, Department of Health and Human Services	400

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CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH AND HUMAN SERVICES

NOTE: Nomenclature changes affecting Chapter II appear at 45 FR 53806, Aug. 13, 1980.

Part		*Page*
200	[Reserved]	
201	Grants to States for public assistance programs	5
204	General administration—Social and Rehabilitation Service grant program	16
205	General administration—public assistance programs	17
206	Application, determination of eligibility and furnishing assistance—public assistance programs	43
208	Assistance to aged individuals in institutions for mental diseases	46
211	Care and treatment of mentally ill nationals of the United States, returned from foreign countries	47
212	Assistance for United States citizens returned from foreign countries	52
213	Practice and procedure for hearings to States on conformity of public assistance plans to Federal requirements	55
224	Work incentive programs for AFDC recipients under title IV of the Social Security Act	60
225	Training and use of subprofessionals and volunteers	81
232	Special provisions applicable to title IV-A of the Social Security Act	83
233	Coverage and conditions of eligibility in financial assistance programs	93
234	Financial assistance to individuals	126
235	Administration of financial assistance programs	135
237	Fiscal administration of financial assistance programs	140
238	Community work experience program.	142

Part		*Page*
239	Work supplemental program.	145
282	Demonstration Projects	147
283–299	[Reserved]	

PART 200—[RESERVED]

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Sec.

201.0 Scope and applicability.
201.1 General definitions.

Subpart A—Approval of State Plans and Certification of Grants

201.2 General.
201.3 Approval of State plans and amendments.
201.4 Administrative review of certain administrative decisions.
201.5 Grants.
201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.
201.7 Judicial review.

Subpart B—Review and Audits

201.10 Review of State and local administration.
201.11 Personnel merit system review.
201.12 Public assistance audits.
201.13 Action on audit and review findings.
201.14 Reconsideration under section 1116(d) of the Act.
201.15 Deferral of claims for Federal financial participation.
201.66 Repayment of Federal funds by installments.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: 35 FR 12180, July 29, 1970, unless otherwise noted.

§ 201.0 Scope and applicability.

Titles I, X, XIV and XVI (as in effect without regard to section 301 of the Social Security Amendments of 1972) shall continue to apply to Puerto Rico, the Virgin Islands, and Guam. The term "State" as used in such titles means Puerto Rico, the Virgin Islands, and Guam.

[39 FR 8326, Mar. 5, 1974]

§ 201.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

(a) "Act" means the Social Security Act, and titles referred to are titles of that Act;

(b) "Department" means the Department of Health and Human Services;

(c) "Administrator" means the Administrator, Social and Rehabilitation Service:

(d) "Secretary" means the Secretary of Health and Human Services;

(e) "Service" means the Social and Rehabilitation Service in the Department;

(f) "Regional Commissioner" means the Regional Commissioner of the Social and Rehabilitation Service;

(g) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) "State agency" means the State agency administering or supervising the administration of the State plan under title I, IV-A, VI, X, XIV, XVI, or XIX of the Act;

(i) The terms "regional office" and "central office" refer to the regional offices and the central office of the Social and Rehabilitation Service, respectively.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34543, Sept. 26, 1974; 39 FR 36114, Oct. 8, 1974]

Subpart A—Approval of State Plans and Certification of Grants

§ 201.2 General.

The State plan is a comprehensive statement submitted by the State agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, the regulations in Subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Service to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

§ 201.3 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover each of its programs under the Act: Old-age assistance (title I); aid and services to needy families with children (Part A of title IV); services

to aged, blind, or disabled (title VI); aid to the blind (title X); aid to the permanently and totally disabled (title XIV); aid to the aged, blind or disabled (title XVI); or medical assistance (title XIX). The State may submit the common material on more than one program as an integrated plan. However, it must identify the provisions pertinent to each title since a separate plan must be approved for each public assistance title. A plan submitted under title XVI encompasses, under a single plan, the programs otherwise covered by three separate plans under titles I, X, and XIV. After approval of the original plan by the Service, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Service may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 204.1 of this chapter, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(c) *Action.* The Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director exercised delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Administrator. The Administrator retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Administrator with the Secretary. The Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director or the Administrator formally notifies the State agency of the actions taken on State plans or revisions.

(d) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of State plans.* Pursuant to section 1116 of the Act, the determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director has secured from the State agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Commissioner, or with respect to the medical assistance

program under title XIX, Regional Medicaid Director has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6 (a) and (b) shall be applicable.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments that provide additional assistance or services to persons eligible under the approved plan or that make new groups eligible for assistance or services provided under the approved plan. For other plan amendments the effective date shall be as specified in other sections of this chapter.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974; 42 FR 43977, Sept. 1, 1977]

§ 201.4 Administrative review of certain administrative decisions.

Pursuant to section 1116 of the Act, any State dissatisfied with a determination of the Administrator pursuant to § 201.3 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director asking the Administrator for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Administrator shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Administrator and the State agree in writing on another time. For hearing procedures, see Part 213 of this chapter. A determination affirming, modifying, or reversing the Administrator's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Administrator described in such § 201.3 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Administrator subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

[35 FR 12180, July 29, 1970, as amended at 42 FR 43977, Sept. 1, 1977]

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts as may be found necessary.

Progressive reductions in Federal Medicaid payments to the States under sections 1903 (s) and (t) of the Act for fiscal years 1982-1984 are described in 42 CFR Part 433, Subpart E.

(a) *Form and manner of submittal.* (1) Time and place: The estimates for public assistance grants for each quarterly period must be forwarded to the regional office 45 days prior to the period of the estimate. They include a certification of State funds available and a justification statement in support of the estimates. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health and Human Services, Social and Rehabilitation Service, Attention: Finance Division, Washington, D.C. 20201, not later than 30 days after the end of the quarter.

(2) Description of forms: "State Agency Expenditure Projection—Quarterly Projection by Program"

80-152 O—82——2

represents the State agency's estimate of the total amount and the Federal share of expenditures for assistance, services, training, and administration to be made during the quarter for each of the public assistance programs under the Act. From these estimates the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The State agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the State agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency or have been revealed in the course of an audit.

(b) *Review.* The State's estimates are analyzed by the regional office staff and are forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows, by program, the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the State agency to draw the amount of the grant award, as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A copy of the grant award notice is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 FR 10201). The HEW "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

(e) *General administrative requirements.* With the following exceptions, the provisions of Part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to States under this part:

45 CFR PART 74

Subpart G—Matching and Cost Sharing.

Subpart I—Financial Reporting Requirements.

[35 FR 12180, July 29, 1970, as amended at 38 FR 26320, Sept. 19, 1973; 46 FR 48003, Sept. 30, 1981]

§ 201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.

(a) *When withheld.* Further payments to a State are withheld in whole or in part if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of an approved plan, finds:

(1) That the plan no longer complies with the provisions of section 2, 402, 602, 1002, 1402, 1602, or 1902 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any such provision.

A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan, the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans, or the failure of the State in practice to comply with a Federal requirement, whether or not its State plan has been amended to conform to such requirement.

(b) *When the rate of Federal financial participation is reduced.* Under title I, VI, X, XIV, or XVI of the Act, Federal financial participation in the costs of social services and training approved at the rate of 75 per centum is reduced to 50 per centum if the Administrator, after reasonable notice and opportunity for a hearing to the State agency, finds:

(1) That the plan provision under such title for prescribed services no longer complies with the Federal requirements with respect to such prescribed services; or

(2) That in the administration of the plan there is a failure to comply substantially with such plan provision.

(c) *Information discussions.* Hearings with respect to matters under paragraph (a) or (b) of this section are generally not called, however, until after reasonable effort has been made by the Service to resolve the questions involved by conference and discussion with State officials. Formal notification of the date and place of hearing does not foreclose further negotiations with State officials.

(d) *Conduct of hearings.* For hearing procedures, see Part 213 of this chapter.

(e) *Notification of withholding.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Administrator is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the plan not affected by such failure).

(f) *Notification of reduction in the rate of Federal financial participation.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (b) of this section, the State agency is notified that further payments will be made to the State at the rate of 50 per centum of the costs of services and training, until the Administrator is satisfied that there will no longer be any failure to comply.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974]

§ 201.7 Judicial review.

Any State dissatisfied with a final determination of the Secretary pursuant to § 201.4 or § 201.6(a) may, within 60 days after it has been notified of such determination, file with the U.S. Court of Appeals for the circuit in which such State is located a petition for review of such determination. After a copy of the petition is transmitted by the clerk of the court to the Secretary, the Secretary thereupon shall file in the court the record of proceedings upon which such determination was based as provided in section 2112 of title 28, United States Code. The court is bound by the Secretary's findings of fact, if supported by

substantial evidence. The court has jurisdiction to affirm the Secretary's decision, or set it aside in whole or in part, or, for good cause, to remand the case for additional evidence. If the case is remanded, the Secretary may thereupon make new or modified findings of fact, and may modify his previous determination. The Secretary shall certify to the court the transcript and record of the further proceedings. The judgment of the court is subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 28 U.S.C. 1254.

Subpart B—Review and Audits

§ 201.10 Review of State and local administration.

(a) In order to provide a basis for determining that State agencies are adhering to Federal requirements and to the substantive legal and administrative provisions of their approved plans, the Service conducts a review of State and local public assistance administration. This review includes analysis of procedures and policies of State and local agencies and examination of case records of individual recipients.

(b) Each State agency is required to carry out a continuing quality control program primarily covering determination of eligibility in statistically selected samples of individual cases. The Service conducts a continuing observation of these State systems.

(c) Adherence to other Federal requirements set forth in the pertinent titles of the Act and the regulations in this title is evaluated through review of selected case records and aspects of agency operations.

§ 201.11 Personnel merit system review.

A personnel merit system review is carried out by the Office of State Merit Systems of the Office of the Assistant Secretary for Administration of the Department. The purpose of the review is to evaluate the effectiveness of the State merit system relating to the public assistance programs and to determine whether there is compliance with Federal requirements in the administration of the merit system plan. See Part 70 of this title.

§ 201.12 Public assistance audits.

(a) Annually, or at such frequencies as are considered necessary and appropriate, the operations of the State agency are audited by representatives of the Audit Agency of the Department. Such audits are made to determine whether the State agency is being operated in a manner that:

(1) Encourages prudent use of program funds, and

(2) Provides a reasonable degree of assurance that funds are being properly expended, and for the purposes for which appropriated and provided for under the related Act and State plan, including State laws and regulations.

(b) Reports of these audits are released by the Audit Agency simultaneously to program officials of the Department, and to the cognizant State officials. These audit reports relate the opinion of the Audit Agency on the practices reviewed and the allowability of costs audited at the State agency. Final determinations as to actions required on all matters reported are made by cognizant officials of the Department.

§ 201.13 Action on audit and review findings.

(a) If the audit results in no exceptions, the State agency is advised by letter of this result. The general course for the disposition of proposed exceptions resulting from audits involves the submittal of details of these exceptions to the State agency which then has an opportunity to concur in the proposed exceptions or to assemble and submit additional facts for purposes of clearance. Provision is made for the State agency to appeal proposed audit exceptions in which it has not concurred and which have not been deleted on the basis of clearance material. After consideration of a State agency's appeal by the Administrator, the Service advises the State agency of any expenditures in which the Federal Government may not participate and requests it to include the amount as adjustments in a subsequent statement of expenditures. Expenditures in which it is found the Federal Government may not participate and which are not properly ad-

justed through the State's claim will be deducted from subsequent grants made to the State agency.

(b) If the Federal or State reviews reveal serious problems with respect to compliance with any Federal requirement, the State agency is required to correct its practice so that there will be no recurrence of the problem in the future.

§ 201.14 Reconsideration under section 1116(d) of the Act.

(a) *Applicability.* This section applies to any disallowance of any item or class of items for which FFP is claimed under title I, IV, VI, X, XIV, XVI(AABD), XIX, or XX of the Act, with respect to which reconsideration was requested prior to March 6, 1978, unless the State by filing a written notice to that effect with the Executive Secretary, Departmental Grant Appeals Board (with proof of service on the head of the constituent agency), within 30 days after mailing of the confirmation of the disallowance by the agency head, elects to have the reconsideration governed by 45 CFR Part 16.

(1) Reduction of the Federal share of assistance payments under title IV-A, for failure to certify WIN registrants (section 402(e) of the Act);

(2) Reduction by one per centum of the quarterly amount payable to a State for all expenditures under title IV-A for failure, in certain cases, to carry out the provisions of section 402(a)(15) of the Act which require the offering of and arrangement for the provision of family planning services (section 402(f) of the Act);

(3) Reduction by one percentum of the quarterly amount payable to a State for all expenditures under title IV-A for failure, in certain cases, to inform of and provide or arrange for certain child health screening, diagnosis, and corrective treatment services (section 403(g) of the Act);

(4) Reduction of the medical assistance percentage paid to a State, under certain circumstances, for failure to have in operation an effective program of control over utilization of certain inpatient medical services (section 1903(g) of the Act);

(5) Reduction of a State's expenditures under title XIX which are subject to FFP, for failure to establish a reasonable differential between the cost of skilled nursing facility services and intermediate care facility services (section 1903(h) of the Act); and

(6) Any other decision pursuant to sections 3, 403, 422, 455, 603, 1003, 1403, 1603, 1903, or 2003, of the Act.

(b) *Notice of disallowance determination.* (1) When the Regional Commissioner, or with respect to the medical assistance program under title XIX, the Administrator, Health Care Financing Administration or his designee, determines that a State claim for FFP in expenditures for a particular item or class of items is not allowable, he shall promptly issue a disallowance letter to the State.

(2) This disallowance letter shall include where appropriate:

(i) The date or dates on which the State's claim for FFP was made;

(ii) The time period during which the expenditures in question were made or claimed to have been made;

(iii) The date and amount of any payment or notice of deferral;

(iv) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were calculated;

(v) Findings of fact on which the disallowance determination is based or a reference to other documents previously or contemporaneously furnished to the State (such as a report of a financial review or audit) which contain the findings of fact on which the disallowance determination is based;

(vi) Pertinent citations to the law, regulations, guides and instructions supporting the action taken; and

(vii) Notice of the State's right to request reconsideration of the disallowance under this section and the time within such request must be made.

(c) *Request for reconsideration.* (1) To obtain reconsideration of a disallowance of an item or class of items for FFP, a State shall, within 30 days of the date of the disallowance letter, request reconsideration by the Administrator, with copy to the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director and

enclose a copy of the disallowance letter.

(2) The request for reconsideration must be accompanied by a brief statement of the issues in dispute, including an explanation of the State's position with respect to each issue.

(d) *Reconsideration procedures.* (1) The Administrator will promptly acknowledge receipt of a State's request for reconsideration.

(2) Upon receipt of a copy of the request for reconsideration, the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director shall, within 30 days of the request, provide to the Administrator a complete record of all material which he believes to have a bearing on the reconsideration, including any reports of audit or review which were the basis for his decision.

(3) The Administrator shall promptly forward to the State a list of all items currently in the record, including those received from the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director and make available for examination, inspection and copying any such items not previously received by the State.

(4) Within 60 days from the date of the Administrator's transmittal to the State under paragraph (d)(3) of this section, the State shall submit in writing to the Administrator any new relevant evidence, documentation, or argument and shall simultaneously submit a copy thereof to the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director.

(5) The Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director shall, within 60 days of submittal by the State, submit to the Administrator (with a copy to the State) an analysis of the issues relevant to the disallowance including:

(i) A restatement of the findings on which the disallowance was based;

(ii) A response to each issue raised by the State with respect to such findings;

(iii) A response to any other issues raised by the State, providing additional documentation when necessary; and

(iv) Any additional documentation which he deems relevant.

(6) The State may respond to the material submitted by the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director by submitting to the Administrator within 15 days any supplemental material the State wishes to have entered into the record.

(7) At the time of submitting any additional material pursuant to paragraph (d)(4), the State may obtain, upon request to him, a conference with the Administrator, during which it may discuss with the Administrator its position on the issues. The State may, at its own expense, have such conference transcribed; the transcript shall become part of the administrative record.

(8) In reconsidering the disallowance, the Administrator may request any additional information or documents necessary to his decision.

(9) New relevant evidence received into the record by the Administrator pursuant to paragraph (d)(8) which is not received from, or previously otherwise made available to, the State shall promptly be made available to the State for examination, inspection, and copying and the State will be given appropriate additional time for comment.

(10) All documents, reports, correspondence, and other materials considered by the Administrator in reaching his decision shall constitute the record of the reconsideration proceedings.

(11) After consideration of such record and the laws and regulations pertinent to the issues in question, the Administrator shall issue a written decision, based on the administrative record, which summarizes the facts and cites the regulations or statutes that support the decision. The decision shall constitute final administrative action on the matter and shall be promptly mailed to the head of the State agency.

(12) Either the state or the Regional Commissioner, or with respect to the medical assistance program under title XIX, Regional Medicaid Director may

request from the Administrator, for good cause, an extension of any of the time limits specified in this section.

(13) No section of this regulation shall be interpreted as waiving the Department's right to assert any provision or exemption in the Freedom of Information Act.

(e) *Implementation of the decision.* If the decision requires an adjustment in the Federal share, either upward or downward, this will be reflected in subsequent grant awards.

(f) For purposes of this section, the Administrator includes the Deputy Administrator, except that whichever official conducts the conference requested pursuant to paragraph (d)(7) of this section will also issue the final administrative decision pursuant to paragraph (d)(11) of this section.

APPENDIX—RECONSIDERATION OF DISALLOWANCES UNDER SECTION 1116(d) OF THE SOCIAL SECURITY ACT

TRANSFER OF FUNCTIONS

Under the authority of Reorganization Plan No. 1 of 1953, and pursuant to the authorities vested in me as Secretary of Health amd Human Services, I hereby order that, with respect to reconsiderations of disallowances imposed under titles I, IV, VI, X, XIV, XVI (AABD), XIX and XX of the Social Security Act, 42 U.S.C. 301 *et seq.*, 601 *et seq.*, 801 *et seq.*, 1201 *et seq.*, 1351 *et seq.*, 1381 *et seq.* (AABD), 1396 *et seq.* and 1397 *et seq.*, all references to "Administrator" appearing in 45 CFR 201.14 shall be deemed to read "Chairman, Departmental Grant Appeals Board" and all references to "Deputy Administrator" appearing therein shall be deemed to refer to one or more members of the Departmental Grant Appeals Board, designated by the Chairman to decide a reconsideration. States which have previously had or requested a conference pursuant to 45 CFR 201.14(d)(7) will be entitled to a conference with the Chairman of the Departmental Grant Appeals Board acting (as provided above) as successor to the Administrator of the Social and Rehabilitation Service (SRS), or with a member or members of the Board designated by the Chairman to decide the matter, acting as successor to the Deputy Administrator of SRS. The Chairman may, at his option, utilize a Grant Appeals Panel, designated pursuant to 45 CFR 516.4(b), to decide the matter, and may supplement the § 201.14 procedures by utilizing the procedures of 45 CFR Part 16 including the authority provided in 45 CFR 16.51 to waive or modify any procedural provision upon a determination that no party will be prejudiced and that the ends of justice will be served.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[40 FR 34592, Aug. 18, 1975; 40 FR 44326, Sept. 26, 1975, as amended at 41 FR 42205, Sept. 27, 1976; 42 FR 43977, Sept. 1, 1977; 42 FR 51583, Sept. 29, 1977; 43 FR 9266, Mar. 6, 1978]

§ 201.15 Deferral of claims for Federal financial participation.

(a) *Scope.* Except as otherwise provided, this section applies to all claims for Federal financial participation submitted by States pursuant to titles I, IV, VI, X, XIV, XVI, XIX, or XX of the Social Security Act.

(b) *Definitions.* (1) *"Deferral Action"* means the process of suspending payment with respect to a claim within the scope of paragraph (a) of this section, pending the receipt and analysis of further information relating to the allowability of the claim, under the procedures specified in this section.

(2) *"Deferred claim"* means a claim within the scope of paragraph (a) of this section upon which a deferral action has been taken.

(c) *Procedures.* (1) A claim or any portion of a claim for reimbursement for expenditures reported on the Quarterly Statement of Expenditures shall be deferred only when the Regional Commissioner, or with respect to the medical assistance program under title XIX, the Administrator, Health Care Financing Administration, or his designee (herinafter collectively referred to as the Administrator) believes the claim or a specific portion of the claim is of questionable allowability. The deferral action will be taken within 60 days after receipt of a Quarterly Statement of Expenditures prepared in accordance with instructions issued by the Service.

(2) When deferral action is taken on a claim, the Regional Commissioner or the Administrator will within 15 days send written notice to the State identifying the type and amount of the claim and the reason for deferral. In the written notice of the deferral action, the Regional Commissioner or the Administrator will request the State to make available for inspection all documents and materials which the

Regional office then believes necessary to determine the allowability of the claim.

(3) Within 60 days of receipt of the notice of deferral action described in paragraph (c)(2) of this section the State shall make available to the Regional office, in readily reviewable form, all requested documents and materials, or when necessary, shall identify those documents and items of information which are not available. If the State requires additional time to make the documents and material available, it shall upon request be given an additional 60 days.

(4) The Regional office will normally initiate the review within 30 days of the date that materials become available for review.

(5) If the Regional Commissioner or Regional Medicaid Director finds that the documents and materials are not in readily reviewable form or that supplemental information is required, he will promptly notify the State. The State will have 15 days from the date of notification to complete the action requested. If the Regional Commissioner or the Administrator finds that the documents necessary to determine the allowability of the claim are not made available within the allowed time limits, or that the documents are not made available in readily reviewable form, he shall promptly disallow the claim.

(6) The Regional Commissioner or the Administrator will have 90 days after all documentation is available in readily reviewable form to determine the allowability of the deferred claim. If he is unable to complete the review within the time period the claim will be paid subject to a later determination of allowability.

(7) It is the responsibility of the State agency to establish the allowability of a deferred claim.

(8) The Regional Office or the Administrator will notify the State in writing of the decision on the allowability of the deferred claim.

(9) If a deferred claim is disallowed, the Regional Commissioner or the Administrator shall advise the State of its right to reconsideration pursuant to § 201.14.

(10) A decision to pay a deferred claim shall not preclude a subsequent disallowance as a result of an audit exception or financial management review. If a subsequent disallowance should occur, the State, upon request shall be granted reconsideration pursuant to § 201.14.

[41 FR 7104, Feb. 17, 1976, as amended at 42 FR 51583, Sept. 29, 1977]

§ 201.66 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under titles I, IV-A, VI, X, XIV, XVI (AABD), XIX or XX which are later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share for the program in which the unallowable expenditure occurred as set forth in paragraph (b) of this section; and

(2) The State has notified the Regional Commissioner in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the specific program against which the recovery is made, as follows:

Total repayment amount as percentage of State share of annual expenditures for the specific program	Number of quarters to make repayment
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20 but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11

Total repayment amount as percentage of State share of annual expenditures for the specific program	Number of quarters to make repayment
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of the estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest SRS-OA-25 submitted by the State shall be used to estimate the State's share of annual expenditures for the specific program in which the unallowable expenditures occurred. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest SRS-OA-25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In the case of a program terminated by law or by the State, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½% of the annual State share for the program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures (SRS-OA-41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full.

This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

(8) Interest on repayments will not be charged unless mandated by court order.

[42 FR 28884, June 6, 1977]

PART 204—GENERAL ADMINISTRATION—SOCIAL AND REHABILITATION SERVICE GRANT PROGRAMS

Sec.

204.1 Submittal of State plans for Governor's review.
204.2 State plans—format.
204.4 Grant appeals.

§ 204.1 Submittal of State plans for Governor's review.

A State plan under title I, IV-A, IV-B, VI, X, XIV, XVI, or XIX of the Social Security Act, section 101 of the Rehabilitation Act of 1973, or title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act, must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Social and Rehabilitation Service with the documents.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[39 FR 34542, Sept. 26, 1974]

§ 204.2 State plans—format.

State plans for Federally-assisted programs for which the Social and Rehabilitation Service has responsibility must be submitted to the Service in the format and containing the information prescribed by the Service, and within time limits set in implementing instructions issued by the Service. Such time limits will be adequate for proper preparation of plans and submittal in accordance with the requirements for State Governors' review (see § 204.1 of this chapter).

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2677(b))

[38 FR 16872, June 27, 1973]

§ 204.4 Grant appeals.

(a) *Scope.* This section applies to certain determinations (as set forth in § 16.5(a) (1)-(4) of this title), made after the effective date of this section, with respect to direct, discretionary project grants awarded by the Social and Rehabilitation Service, and such other grants or grant programs as the Administrator, with the approval of the Secretary, may designate. The statutory authority for current grant programs to which this section applies appears in the appendix to this section. This section is also applicable to determinations with respect to grants which were made under authority which has expired or been repealed since the grants were made, even though such authority does not appear in the appendix.

(b) *Submission.* (1) A grantee who has received notification, as described in § 16.5(b) of this title, of a determination described in § 16.5(a) (1)-(4) of this title, may request reconsideration by informing the Grants Appeals Officer as identified in the final adverse determination or otherwise designated by the Administrator, Social and Rehabilitation Service, Washington, D.C. 20201 of the grantee's intent to contest the determination, and may request reconsideration. The grantee's request for reconsideration must be postmarked no later than 30 days after the postmark date of the written notification of such determination, except when:

(i) The Grant Appeals Officer grants an extension of time for good cause; or

(ii) The constituent agency fails to make a written notification under the circumstances described in the last sentence of § 16.5(b) of this title, in which case, subject to paragraph (b)(1)(i) of this section, the grantee's request for reconsideration must be postmarked no later than 90 days after the postmark date of the grantee's request for permission to incur an expenditure.

(2) Although the request need not follow any prescribed form, it shall clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or ques-

tions, and the pertinent facts and reasons in support of such position. Except in the case of a determination described in the last sentence of § 16.5(b) of this title, the grantee shall attach to his submission a copy of the agency notification described in § 16.5(b)(1) of this title.

(c) *Action by the Service on requests for reconsideration.* (1) Upon receipt of such an application the Grant Appeals Officer will inform the grantee that:

(i) His request is under review, and

(ii) If no decision is received within 90 days (or 45 days in the case of a determination described in the last sentence of § 16.5(b) of this title) of the postmark date of the grantee's request for reconsideration, the determination may be appealed to the Departmental Grant Appeals Board.

(2) The Grant Appeals Officer will reconsider the determination appealed from, considering any material submitted by the grantee and any other material necessary.

(3) If the response to the grantee is adverse to the grantee's position, the response will include notification of the grantee's right to appeal to the Departmental Grant Appeals Board.

APPENDIX

This section is issued under sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and is applicable to programs carried out under the following authorities:

(1) Section 222(a) and (b) of the Social Security Amendments of 1972 (Pub. L. 92-603).

(2) Section 426 of the Social Security Act (42 U.S.C. 262).

(3) Section 707 of the Social Security Act (42 U.S.C. 907).

(4) Section 1110 of the Social Security Act (42 U.S.C. 1310).

(5) Section 1115 of the Social Security Act (42 U.S.C. 1315).

(Secs. 1, 5, 6, 7 Reorganization Plan No. 1 of 1953, 67 Stat. 631)

[40 FR 51443, Nov. 5, 1975]

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Sec.

205.5 Plan amendments.
205.10 Hearings.
205.25 Eligibility of supplemental security income beneficiaries for food stamps or surplus commodities.
205.30 Methods of administration.
205.35 Mechanized claims processing, and information retrieval systems; definitions.
205.36 State plan requirements.
205.37 Federal financial participation (FFP) for establishing a statewide mechanized system.
205.38 Responsibilities of the Social Security Administration (SSA).
205.40 Quality control system.
205.41 Reduction of FFP for incorrect payments by States (effective through September 1980).
205.42 Reduction in Federal financial participation (FFP) for incorrect payments by States after September 1980.
205.43 Increase in Federal financial participation (FFP) for States with low error rates.
205.45 Federal financial participation in relation to State emergency welfare preparedness.
205.50 Safeguarding information for the financial assistance programs.
205.51 Definition of wage information.
205.56 Access to wage information from agencies administering State unemployment compensation laws and from the Social Security Administration.
207.57 Maintenance of an automated file; requests for wage information.
205.58 Access to wage information; specific agreements between the State agency and the agency supplying the information.
205.60 Reports and maintenance of records.
205.70 Availability of agency program manuals.
205.80 Evaluation of the Work Incentive Demonstration Program.
205.100 Single State agency.
205.101 Organization for administration.
205.120 Statewide operation.
205.130 State financial participation.
205.146 Specific limitations on Federal financial participation under title IV-A.
205.150 Cost allocation.
205.160 Non-expendable personal property.
205.170 State standards for office space, equipment, and facilities.
205.190 Standard-setting authority for institutions.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted.

§ 205.5 Plan amendments.

(a) *State plan requirements.* A State plan under title I, IV-A, VI, X, XIV, XVI, or XIX of the Social Security

Act must provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy or State agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

[39 FR 34542, Dec. 26, 1974]

§ 205.10 Hearings.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act shall provide for a system of hearings under which:

(1) The single State agency responsible for the program shall be responsible for fulfillment of hearing provisions which shall provide for:

(i) A hearing before the State agency, or

(ii) An evidentiary hearing at the local level with a right of appeal to a State agency hearing. Where a State agency adopts a system of evidentiary hearings with an appeal to a State agency hearing, it may, in some political subdivisions, permit local evidentiary hearings, and in others, provide for a single hearing before the State agency. Under this requirement hearings shall meet the due process standards set forth in the U.S. Supreme Court decision in Goldberg v. Kelly, 397 U.S. 254 (1970) and the standards set forth in this section.

(2) Hearing procedures shall be issued and publicized by the State agency.

(3) Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

(i) Of his right to a hearing, as provided in paragraph (a)(5 of this section;

(ii) Of the method by which he may obtain a hearing;

(iii) That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective, vendor, or two-party payment under § 234.60:

(i) The State or local agency shall give timely and adequate notice, except as provided for in paragraphs (a)(4)(ii), (iii), or (iv) of this section. Under this requirement:

(A) "Timely" means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective;

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, and the circumstances under which assistance is continued if a hearing is requested;

(ii) The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

(A) The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as new payee;

(B) The agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information;

(C) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

(D) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(E) The claimant's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(F) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(G) An AFDC child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian;

(H) [Reserved]

(I) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

(iii) When changes in either State or Federal law require automatic grant adjustments for classes of recipients, timely notice of such grant adjustments shall be given which shall be "adequate" if it includes a statement of the intended action, the reasons for such intended action, a statement of the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(iv) When the agency obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of such grant adjustment shall be timely if mailed at least five (5) days before action would become effective.

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his or her claim for financial assistance is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(6) If the recipient requests a hearing within the timely notice period:

(i) Assistance shall not be suspended, reduced, discontinued or terminated, (but is subject to recovery by the agency if its action is sustained), nor may the manner or form of payment be changed to a protective, vendor, or two-party payment under § 234.60, until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation; or

(B) A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(ii) The agency shall promptly inform the claimant in writing if assistance is to be discontinued pending the hearing decision; and

(iii) In any case where the decision of an evidentiary hearing is adverse to the claimant, he shall be informed of and afforded the right to make a written request, within 15 days of the mailing of the notification of such adverse decision, for a State agency hearing and of his right to request a de novo hearing. Unless a de novo hearing is specifically requested by the appellant, the State agency hearing may consist of a review by the State agency hearing officer of the record of the evidentiary hearing to determine whether the decision of the evidentiary hearing officer was supported by substantial evidence in the record. Assistance shall not be continued after an adverse decision to the claimant at the evidentiary hearing.

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless at the hearing it is de-

termined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing.

(8) The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.

(9) Hearings shall be conducted by an impartial official (officials) or designee of the agency. Under this requirement, the hearing official (officials) or designee shall not have been directly involved in the initial determination of the action in question.

(10) When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(11) In respect to Title IV-C, when the appeal has been taken on the basis of a disputed WIN registration requirement, exemption determination or finding of failure to appear for an appraisal interview, a representative of the local WIN manpower agency shall, where appropriate, participate in the conduct of the hearing.

(12) The hearing shall include consideration of:

(i) An agency action, or failure to act with reasonable promptness, on a claim for financial assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

(ii) Agency decision regarding:

(A) Eligibility for financial assistance in both initial and subsequent determinations,

(B) Amount of financial assistance or change in payments,

(C) The manner or form of payment, including restricted or protective payments, even though no Federal financial participation is claimed.

(13) The claimant, or his representative, shall have adequate opportunity:

(i) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) At his option, to present his case himself or with the aid of an authorized representative;

(iii) To bring witnesses;

(iv) To establish all pertinent facts and circumstances;

(v) To advance any arguments without undue interference;

(vi) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(14) Recommendations or decisions of the hearing officer or panel shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendation or decision of the hearing officer or panel shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.

(15) Decisions by the hearing authority shall:

(i) In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of a State agency de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

Under this requirement no persons who participated in the local decision

being appealed shall participate in a final administrative decision on such a case.

(16) Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing.

(17) The claimant shall be notified of the decision in writing and, to the extent it is available to him, of his right to appeal to State agency hearing or judicial review.

(18) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency shall promptly make corrective payments retroactively to the date the incorrect action was taken.

(19) All State agency hearing decisions shall be accessible to the public (subject to provisions of safeguarding public assistance information).

(b) *Federal financial participation.* Federal financial participation is available for the following items:

(1) Payments of assistance continued pending a hearing decision.

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

(4) Administrative costs incurred by the agency for:

(i) Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing;

(ii) Meeting other expenditures incurred by the claimant in connection with the hearing;

(iii) Carrying out the hearing procedures, including expenses of obtaining an additional medical assessment.

(Secs. 402, 403, 406, and 1102 of the Social Security Act, as amended, 49 Stat. 627, as amended, 49 Stat. 628, as amended, 49 Stat. 629, as amended, 49 Stat. 647, as amended, 42 U.S.C. 602, 603, 606, and 1302, and sec. 3 of Pub. L. 95-171, 91 Stat. 1354)

[38 FR 22007, Aug. 15, 1973, as amended at 39 FR 12009, Apr. 2, 1974; 44 FR 17941, Mar. 23, 1979; 44 FR 26082, May 4, 1979; 45 FR 20480, Mar. 28, 1980; 46 FR 46762, Sept. 21, 1981]

§ 205.25 Eligibility of supplemental security income beneficiaries for food stamps or surplus commodities.

(a) In respect to any individual who is receiving supplemental security income benefits under Title XVI of the Social Security Act, the State agency shall make the following determinations:

(1) The amount of assistance such individual would have been entitled to receive for any month under the appropriate State plan in effect for December 1973, under Title I, X, XIV, or XVI, and for such purpose such individual shall be deemed to be aged, blind, or permanently and totally disabled, as the case may be, under the provisions of such plan.

(2) The bonus value of the food stamps (according to the Food Stamp Schedule effective for July 1973) such individual would have been entitled to receive for such month, assuming the individual were receiving the assistance determined under paragraph (a)(1) of this section.

(3) The amount of benefits such individual is receiving for such month under Title XVI, plus supplementary payments as defined in section 1616(a) of the Social Security Act and payments pursuant to section 212 of Pub. L. 93-66, if any.

(b) If the amount determined in paragraph (a)(1) of this section plus the amount determined in paragraph (a)(2) of this section exceeds the amount determined in paragraph (a)(3) of this section, such individual shall be eligible to participate in the food stamp program established by the Food Stamp Act of 1964 or surplus commodities distribution programs established by the Secretary of Agriculture pursuant to section 416 of the Agricultural Act of 1949, Section 32 of Pub. L. 74-320, or any other law, in accordance with regulations and procedures established by the Secretary of Agriculture.

(c) For purposes of paragraph (a)(3) of this section, the State agency shall obtain the amount of the title XVI payment and the amount of any Federally administered State supplementary payment from the Social Security Administration.

(d) The State agency shall redetermine the eligibility of individuals to participate in the food stamp or surplus commodities distribution programs hereunder at such times as the Secretary of Agriculture requires recertification for such stamps or commodities.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[38 FR 34324, Dec. 13, 1973]

§ 205.30 Methods of administration.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan.

[45 FR 56684, Aug. 25, 1980]

§ 205.35 Mechanized claims processing and information retrieval systems; definitions.

Sections 205.35 through 205.38 contain State plan requirements for an automated statewide management information system, conditions for FFP and responsibilities of the Social Security Administration (SSA). For purposes of §§ 205.35 through 205.38—

"A *mechanized claims processing and information retrieval system*", hereafter referred to as an automated "application processing and information retrieval system" (APIRS), or the "system", means a system of software and hardware used:

(a) To introduce, control and account for data items in providing public assistance under the Aid to Families with Dependent Children (AFDC) State plan; and

(b) To retrieve and produce utilization and management information about such aid and services as required by the single State agency and Federal government for program administration and audit purposes.

"Hardware" means automatic data processing equipment used for an application processing and information retrieval system. This equipment accepts data input, stores data, performs calculations and other processing steps and prepares information output. This equipment includes—

(a) Electronic digital computers;

(b) Peripheral or auxiliary equipment used in support of electronic computers whether selected and acquired with the computer or separately;

(c) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of automatic data processing equipment which includes an electronic digital computer; and

(d) Key to disk, key to tape, or other automated equipment used to enter data into a computer based system.

"Software" means computer programs, procedures and associated documentation used to operate the hardware.

"Planning" means—

(a) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(b) The preparation of an APD;

(c) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(d) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

"Design" or "system design" means a combination of narrative and diagrams describing the structure of the automated APIRS.

"Development" means the detailing of system and program specifications, programming, and testing.

"Installation" means the conversion, and turnover to operational status.

"Operations" means the automated processing of AFDC applications, payments, and reports on a continuing basis for use by AFDC agency personnel in carrying out functions covered under approved State plans. This includes, but is not limited to, such elements as intake processing, eligibility

determinations, verification procedures, WIN program referral, title IV-D program interface, the issuance of warrants, reconciliation of warrants, fiscal budgeting and reporting, quality control processing, and management reporting. Operations include the use of purchased or rented computer equipment and software directly required for and used in the operation of the automated system. Pilot testing and parallel processing for test purposes shall not be considered as operations.

[46 FR 47786, Sept. 30, 1981]

§ 205.36 State plan requirements.

A State plan under title IV-A of the Social Security Act shall, at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved by SSA, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of an approved AFDC State plan. The submission process to amend the State plan is explained in § 201.3. This system must be designed:

(a) To automatically control and account for—

(1) All the factors in the total eligibility determination process under the plan for aid, including but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of AFDC and the relative with whom any child who is an applicant or recipient is living)).

(A) To assure sufficient compatibility among the systems of different jurisdictions, and

(B) To permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction,

(ii) Checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra and inter-state, for eligibility determination, verification and payment as required by other provisions of the Social Security Act.

(2) The costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid.

(b) To notify the appropriate State officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever a case/recipient for aid and services becomes ineligible or the amount of aid or services is changed.

(c) To provide for security against unauthorized access to, or use of, the data in the system.

[46 FR 47787, Sept. 30, 1981]

§ 205.37 Federal financial participation (FFP) for establishing a statewide mechanized system.

(a) Effective July 1, 1981, FFP is available at 90 percent of expenditures incurred for planning, design, development or installation of a statewide automated application processing and information retrieval system which are consistent with an approved APD. The 90 percent FFP includes the purchase or rental of computer equipment and software directly required for and used in the operation of this system.

(b) SSA will approve the system provided the following conditions are met—

(1) SSA determines that the system is likely to provide more efficient, economical, and effective administration of the AFDC program.

(2) The system is compatible with the claims processing and information retrieval systems used in the administration of State plans approved under title XIX, and State programs where there is FFP under title XX.

(3) The system meets the requirements referred to in § 205.36.

(4) The system meets criteria established in the title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide issued by SSA and which provides specific standard requirements for major functions, such as automated eligibility determination, grant computation, verification, referral, management control, compatibility, and data security.

80-152 O—82——3

(5) The State agency agrees in writing that—

(i) The State will have all ownership rights in software or modifications thereof and associated documentation designed or developed with 90 percent FFP under this section, except that the Department of Health and Human Services reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes, such software, modifications, and documentation;

(ii) Methods and procedures for properly charging the cost of all systems whether acquired from public or private sources shall be in accordance with Federal regulations in Part 74 of this title and the applicable SSA title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide;

(iii) The complete system planned, designed, developed, installed, and hardware acquired, with FFP under these regulations will be used for a period of time which is consistent with the advance planning document as approved, or which SSA determines is sufficient to justify the Federal funds invested;

(iv) Information in the system will be safeguarded in accordance with applicable Federal law; and

(v) Access to the system in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available to the Federal Government by the State at intervals deemed necessary by SSA to determine whether the conditions for approval are being met and to determine its efficiency, economy and effectiveness.

(c) If SSA suspends approval, as described in § 205.38, of the advance automated data processing planning document and/or system, FFP at the higher matching rate shall not be allowed for any costs incurred, until such time as the conditions for approval are met

[46 FR 47787, Sept. 30, 1981]

§ 205.38 Responsibilities of the Social Security Administration (SSA).

(a) SSA shall not approve the initial and annually updated advance automatic data processing planning document unless the document, when implemented, will carry out the requirements of the law and the objectives of the title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide. This document must include—

(1) A requirements analysis, including consideration of the program mission, functions, organization, services, constraints and current support relating to such system;

(2) A description of the proposed statewide management system, including the description of information flows, input data formats, output reports and uses;

(3) The security and interface requirements to be employed in such statewide management system;

(4) A description of the projected resource requirements including staff and other needs; and the resources available or expected to be available to meet these requirements;

(5) A cost benefit analysis of alternative systems designs, data processing services and equipment in terms of qualitative and quantitative measures. The alternative systems considered should include the advantages of the proposed system over the alternatives and should indicate the period of time the system will be operated to justify the funds invested;

(6) A plan for distribution of costs, containing the basis for rates, both direct and indirect, to be in effect under such a statewide management system;

(7) An implementation plan with charts of development events, testing description, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of a system; and

(8) Evidence that the State's system will be compatible with those of the SSA to facilitate the exchange of data between the State and Federal system.

(b) SSA shall on a continuing basis, review, assess, and inspect the planning, design, and operation of,

statewide management information systems, with a view to determining whether, and to what extent, these systems meet and continue to meet the requirements under these regulations.

(c) If SSA finds that any statewide management information system referred to in § 205.37 fails to comply substantially with criteria, requirements, and other undertakings, prescribed by the approved advance automatic data processing planning document, approval of such document shall be suspended. The State will be given written notice of the suspension. The notice of suspension will be undertaken only as a result of State applications for increased matching. The submission process will be the same as that defined in 45 CFR 95.600

[46 FR 47788, Sept. 30, 1981]

§ 205.40 Quality control system.

(a) *Definitions.* For purposes of this section, notwithstanding any other regulations in this chapter:

(1) *"Assistance unit"* means all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, an assistance payment for which Federal financial participation is claimed under this chapter.

(2) *"Case error,"* for active cases, means an overpayment, underpayment, or payment to ineligibiles, as defined in this section; for negative case actions, means that the reason given by the agency for that action was incorrect. (For exceptions and special provisions, see paragraph (c) of this section.)

(3) *"Payment to ineligibles"* means a financial assistance payment received by or for an assistance unit, for the review month, when that assistance unit was not eligible for any part of the payment under permissible State practice in effect on the first day of the review month, even though the State agency had not made a finding of ineligibility under § 206.10(a)(5) of this chapter.

(4) *"Overpayment"* means a financial assistance payment received by or for an assistance unit, for the review month, which exceeds by at least $5.00 the amount for which that unit was eligible under permissible State practice in effect on the first day of the review month.

(5) *"Underpayment"* means a financial assistance payment received by or for an assistance unit for the review month which is at least $5.00 less than the amount for which that assistance unit under permissible State practice was eligible in effect on the first day of the review month.

(6) *"Review month"* means the specific calendar or fiscal month for which the assistance payment under review is received.

(7) *"Assistance payment"* means a single payment (or two successive payments, in States that pay on a semimonthly basis), received for a specific calendar or fiscal month.

(8) *"Permissible State practice"* means State written policy instructions that are consistent with the State plan or with plan amendments which have been submitted to, but have not been acted upon by the Department. In all instances where written instructions are not consistent with the State plan or proposed plan amendments, permissible State practice means the provisions of the State plan.

(9) *"Negative case action"* means an action to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate assistance.

(b) *State plan requirements.* A State plan under title IV-A or I, X, XIV or XVI of the Social Security Act must provide for a continuing system of quality control for assuring that assistance is furnished in accordance with permissible State practice as defined in paragraph (a) of this section. Under this requirement:

(1) The State agency shall operate the quality control system in accordance with policies and procedures prescribed in the Quality Control Manuals issued by the Department. Specifically:

(i) It shall apply the prescribed sampling and methods and schedules.

(ii) It shall conduct field investigations, including a personal interview in all cases which fall within the sample

of active cases, and as necessary for cases in the negative case action sample.

(iii) It shall provide the resources and methods necessary to analyze the findings of the system.

(iv) It shall take appropriate corrective action on improperly authorized or denied assistance and on the causes of improper actions.

(v) It shall assure access by HHS staff to State and local records relating to public assistance, to recipients, and to third parties.

(2) The State agency shall submit to the Department, in such form and at such times as it prescribes:

(i) A description of the State's sampling plan;

(ii) On a monthly basis during the 6-month sampling period, for each active sample case in the State Quality Control review, the original finding on the amount of the assistance payment and, where a case error has been determined to exist, the amount by which the payment was in error, and whether the error was an overpayment, underpayment, or payment to an ineligible;

(iii) Data required by Forms QC 341.1, 341.1A, 342.1, 401.1, 401.2, and 401.3, within 60 days of the close of the 6-month sampling period to which such data apply.

(iv) A corrective action plan for reducing the case error rates of the ineligiblity, overpayments, and underpayments, within 90 days of the close of the 6-month sampling period to which they apply (April 1 through September 30, or October 1 through March 31), even after achieving case error rates of:

(A) 3 percent for ineligibility;

(B) 5 percent for overpayments; and

(C) 5 percent for underpayments; and

(v) A corrective action for reducing the rate of improper actions to deny or terminate assistance; and

(vi) Data required by Forms QC 341.2, 341.3, 341.4, 342.2, 342.3, and 342.4, at the same time the corrective action plan is submitted.

(c) *Special provisions applicable to changes in circumstances.* (1) An overpayment, underpayment, or payment of ineligibiles that is related to a change in circumstances shall be counted as a case error if:

(i) The changes are incorrectly reflected in the review month payment; or

(ii) The change occurred in or before the second month prior to the review month and is not reflected in the review month payment.

(2) An overpayment, underpayment, or payment to ineligibles that is related to a change in circumstances shall not be counted as a case error if:

(i) The payment continues unadjusted because a hearing was requested; or

(ii) The change occurred in the review month or the month immediately preceding the review month.

(3) For purposes of this paragraph (c):

(i) A hearing decision is considered a change in circumstances;

(ii) The fact that the agency has complied with the requirements for redetermination of eligibility (see § 206.10(a)(9) of this chapter) has no bearing; and

(iii) When the overpayment, underpayment, or payment to ineligibles is the result of several changes in circumstances, each change will be evaluated as to its impact on the final determination of case error.

(d) *Temporary exception.* The term "case error" shall not, for the purpose of this section, and through the period ending December 31, 1977, include errors that result solely from States:

(1) Failure to apply, or improper or incomplete application of, the following provisions of the following sections of this chapter:

(i) 45 CFR 232.10 Furnishing of social security numbers;

(ii) 45 CFR 232.11 Assignment of rights to support;

(iii) 45 CFR 232.12 Cooperation in obtaining support;

(iv) 45 CFR 232.20(a)(3), regarding treatment of unemployment compensation received by unemployed fathers, or

(v) 45 CFR 232.100(a)(5)(ii), regarding application for, and acceptance of, unemployment compensation.

(2) Treatment of child support collected and distributed under the State IV-D plan and support or contribution income received directly from a legally

liable individual by the AFDC family after the recipient has assigned support rights to the State agency.

[42 FR 37207, July 20, 1977, as amended at 43 FR 2631, Jan. 18, 1978]

§ 205.41 Reduction of FFP for incorrect payments by States (effective through September 1980).

(a) *Purpose and applicability.* (1) This section provides the rules we will use to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State, and, if so, the amount of the reduction. We will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

(2) We will use the data from the quality control system (see § 205.40) in each State and the Federal monitoring system in determining the amount of incorrect payments. The quality control system provides data on incorrect payments for every 6-month period.

(3) The rules in this section apply to all States through the end of the April-September 1980 quality control sample period. Beginning with the October 1980-March 1981 quality control sample period and for subsequent 6-month sample periods, we will apply the performance standards described in § 205.42.

(b) *Definitions.* For purposes of this section—

"Base period" refers to the April-September quality control system review period each year, beginning with the April-September 1978 period.

"Incorrect payments" refer to payments to people who are ineligible for a payment and overpayments to eligible people.

"National standard" refers to the weighted mean payment error rate of all of the States' payment error rates.

"Payment error rate" refers to the dollar amount of incorrect payments a State has made expressed as a percentage of the State's total payments.

"We," "us" or "our" refers to the Department or the Social Security Administration as appropriate.

(c) *General.* In these rules we are establishing a national standard for incorrect payments in the AFDC programs. We establish this national standard every year using the payment error rate data from the April-September quality control system period. The national standard will be the weighted mean of all of the States' payment error rates. This standard will be used to measure performance of the States in the following April-September period and in the October-March period after that. A State whose payment error rate is below the national standard must not go above the standard, without risking reduction in Federal matching funds. A State whose payment error rate is above the standard must reduce its error rate to the national standard or to the State's target error rate established under these rules. To figure the target error rate, we have established 6.4 percent as a reasonable rate of improvement in a State's performance that is above the national standard.

We, therefore, will establish the target error rate by multiplying the State's payment error rate by 93.6 percent. This figure is 100 percent minus the 6.4 percent improvement rate. If a State make incorrect payments in a base period that are higher than the national standard, we will give the State until the second 6-month period after the base period to reduce its incorrect payments to an acceptable level. If a State fails to meet this level during the second or third 6-month period after the base period and cannot show good reason, we will reduce the amount of our matching funds for that 6-month period(s). We provide several examples of what we will consider good reasons for not meeting the goal. We describe this process in detail in the following paragraphs.

(d) *How we establish a national standard*—(1) *Information we will use.* We will use the information provided by the Federal/State quality control system. This system measures the dollar amount of incorrect payments for every 6-month period (April-September and October-March). If a State fails to complete a valid and reliable sample for any 6-month sample

period, we will assign to the State an error rate based on either the weighted average of the State's payment error rate for the last three sample periods, a Federal sample, an audit, or a Federal subsample.

(2) *How we use the information.* We will figure the weighted mean payment error rate for all States using each State's payment error rate and giving weight to the total amount of payments in the State's AFDC program. The weighted mean payment error rate will be the national standard.

(3) *When we will establish the national standard.* We will establish the national standard every year, using the quality control data for the April-September period of each year. We refer to this period as the "base period." We will establish the national standard for this time using the quality control data from the April-September 1978 period.

(e) *How we establish acceptable levels for State performance using the national standard*—(1) *General.* We will measure each State's payment error rate for each base period against the national standard, and set performance goals which apply to both the second and third subsequent 6-month periods. If the State's payment error rate in the base period is below the standard, we consider that the State has reached an acceptable level of performance, and the State's payment error rate must continue to remain below the standard. If the State's payment error rate in the base period is higher than the standard, the State must achieve the standard. Alternatively, if it is to the State's advantage, the State must achieve its target error rate.

(2) *How we establish a target error rate for a State above the standard.* We have established 6.4 percent as a reasonable rate of improvement in the performance of a State with a payment error rate above the current national standard. To establish the target error rate, we multiply the State's payment error rate in the base period by 93.6 percent (100 percent minus the 6.4 percent improvement rate).

EXAMPLE.—The State's payment error rate in the base period is 20 percent. The national standard is 8 percent. To find the target error rate, we multiply 20 percent by 93.6 percent, which gives a target error rate of 18.7 percent.

(3) *When a State must meet and maintain the established rate.* A State must meet the higher of the national standard or its target error rate in the second 6-month period and in the third 6-month period following each base period. Therefore, if a State has a payment error rate above the national standard for the April-September period. The State must reduce its error rate to the national standard or to the State's target error rate by the next April-September period, and also must not exceed this error rate level in the following October-March period.

(f) *If a State fails to meet the established rate.* If a State does not meet the national standard or its target error rate for either of the required 6-month periods and cannot show a good reason for it, we will reduce our matching funds to the State for those 6 (12) months, using the following formula. We will reduce our matching funds by the amount we would not have paid if the State had reached its goal (the national standard or the target error rate). If the State uses the regular Federal percentage for FFP and has an average monthly payment per recipient of more than $32 in a 6-month sample period, an adjustment will be made to the State's error rate for purposes of determining the amount of reduction in our matching funds.

EXAMPLE.—If the State's target error rate was 10 percent and the State's actual payment error rate was 12 percent, we will reduce our matching funds by 2 percent of the Federal share of the dollars the State paid under its AFDC program.

(g) *How a State can show good reason for not meeting the established rate.* (1) We will notify a State that we are going to reduce (or disallow) matching funds because the State did not meet the national standard or the target error rate established for the State. The State will have 65 days from the date on this notification to show good reason for not meeting the

established error rate. If we find that the State did not meet the standard or the target error rate because of factors beyond its control, we will reduce the funds being disallowed in whole or in part, or not at all, as we find appropriate under the circumstances shown by the State. Some examples of good reasons are—

(i) Disasters such as fire, flood or civil disorders, that—

(A) Require the diversion of significant personnel normally assigned the AFDC eligibility administration, or

(B) Destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(ii) Strikes of State staff or other government or private personnel necessary to the detemination of eligibility or processing of case changes;

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulation, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period; and

(iv) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation.

(2) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources does not constitute a factor beyond the State's control.

(h) *Disallowance subject to appeal.* If a State does not agree with our decision to reduce (disallow) FFP, it can appeal to us within 45 days from the date of our notice. The regular procedures for appeal of disallowances will apply, including review by the Grant Appeals Board (see 45 CFR Part 16).

(Secs. 1102 and 1631 of the Social Security Act, 49 Stat. 647, as amended; 86 Stat. 1745, as amended; 42 U.S.C. 1302; 42 U.S.C. 1383; Pub. L. 96-38)

[44 FR 12584, Mar. 7, 1979, as amended at 45 FR 6333, Jan. 25, 1980]

§ 205.42 Reduction in Federal financial participation (FFP) for incorrect payments by States after September 1980.

(a) *Purpose and applicability.* This section provides the rules we will use beginning with October 1980 to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State, and, if so, the amount of the reduction. We will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

(b) *Definitions.* For the purposes of this section—

"Annual assessment period" means the 12-month period October 1-September 30.

"Base period" means the April-September 1978 quality control system review period.

"Incorrect payments" means payments to people who are ineligible for a payment and overpayments to eligible people.

"National standard" means a 4 percent payment error rate.

"Payment error rate" means the dollar amount of incorrect payments a State has made expressed as a percentage of the State's total payments.

"We," "us" or "our" means the Department or the Social Security Administration as appropriate.

(c) *General.* In these rules we are establishing a national standard for incorrect payments in the AFDC programs. This standard will be used to measure performance of the States in each annual assessment period beginning with the October 1980-September 1981 period. A State whose payment error rate is below the national standard in the base period must not go above the standard, without risking reduction in Federal matching funds. A State whose payment error rate is above the standard must reduce its error rate to the national standard or to the State's target error rate established under these rules.

(d) *How we establish acceptable levels for State performance using the national standard*—(1) *Target error rates for States above the national standard in the base period.* (i) Each State with a base period payment error rate in excess of 4 percent must reduce its payment error rate to 4 percent by the October 1982-September 1983 annual assessment period in 3

equal increments for each October-September annual assessment period beginning with the October 1980–September 1981 period.

(ii) We will establish each State's target error rate for the October 1980–September 1981 annual assessment period by multiplying one-third times the amount by which the State's base period payment error rate exceeds 4 percent; this product is then subtracted from the State's base period payment error rate. To establish the target error rate for the October 1981–September 1982 annual assessment period, we will multiply two-thirds times the amount by which the State's base period payment error rate exceeds 4 percent; this product is then subtracted from the State's base period payment error rate. For all annual assessment periods after September 30, 1982, the State must meet the 4 percent national standard.

EXAMPLE.—The State's payment error rate during the base period is 10 percent. Therefore, the amount by which the State's payment error rate exceeds the 4 percent national standard is 6 percent (or 10 minus 4). The State must reduce this 6 percent by one-third, or 2 percent (8 percent target error rate) for the October 1980–September 1981 annual assessment period. For the October 1981–September 1982 annual assessment period, the State's target error rate would be 6 percent. For all annual assessment periods after September 30, 1982, the State must meet the 4 percent national standard.

(2) *States that have achieved the national standard.* States that have achieved the 4 percent national standard in the base period must maintain that standard.

(e) *Information we will use.* We will use the information provided by the Federal/State quality control system. This system measures the dollar amount of incorrect payments for every 6-month period. (April–September and October–March). A State's payment error rate for the annual assessment period will be the sum of the weighted payment error rates in the State for the two corresponding 6-month sample periods. The weights will be established as a percentage of the total annual payments that occur in each of the 6-month periods. If a State fails to complete a valid and reliable sample for any 6-month sample period, we will assign to the State an error rate based on the weighted average of the State's payment error rate for the last three sample periods, a Federal sample, an audit, or a Federal subsample.

(f) *If a State fails to meet the established rate.* If a State does not meet the national standard or its target error rate for any 12 month annual assessment period, we will reduce our matching funds to the State to those 12 months, unless the State can show that it made a good faith effort to meet the target rate. We will reduce our matching funds by the amount we would not have paid if the State had reached its goal (the national standard or the target error rate). If a State uses the regular Federal percentage for FFP and has an average monthly payment per recipient of more than $32 in a 6-month sample period, an adjustment will be made to the State's error rate for purposes of determining the amount of reduction in our matching funds.

EXAMPLE.—The State's target payment error rate was 8 percent. During the first 6-month sample period the actual payment error rate was 10 percent and the total payments made during that 6-month period were $20 million. During the second 6-month sample period, the payment error rate was 9 percent and total payments were $30 million. The total payments in the annual assessment period were $50 million. The weight applied to the payment error rate for the first 6-month period would be 0.4 ($20 million divided by $50 million) and the weight applied to the payment error rate for the second 6-month period would be 0.6 ($30 million divided by $50 million). Therefore the payment error rate for the annual assessment period would be 9.4 percent or 4 percent (10% x 0.4 for the first 6 months) plus 5.4% (9% x 0.6 for the second 6 months). Since the target error rate was 8 percent and the payment error rate was 9.4 percent, we will reduce our matching funds by 1.4 percent of the Federal share of the dollars the State paid under its AFDC program.

(g) *When we will reduce a disallowance because a State has made a good faith effort.* (1) We will notify a State that we are going to reduce (or disallow) matching funds because the State did not meet the national standard or

the target error rate established for the State. The State will have 65 days from the date on this notification to show that it made a good faith effort to meet the established error rate target. If we find that the State did not meet the national standard or the target error rate despite a good faith effort, we will reduce the funds being disallowed in whole or in part as we find appropriate under the circumstances shown by the State. A finding that a State did not meet the target error rate despite a good faith effort will be limited to extraordinary circumstances.

(2) Some examples of circumstances under which we may find that a State did not meet the target error rate despite a good faith effort are—

(i) Disasters such as fire, flood or civil disorders, that—

(A) Require the diversion of significant personnel normally assigned to AFDC eligibility administration, or

(B) Destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(ii) Strikes of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes;

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulations, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period;

(iv) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation; and

(v) The State timely developed and implemented a corrective action plan reasonably designed to meet the target error rate but the target error rate was not met. In evaluating whether the State has indeed made a good faith effort in these circumstances, we will consider the following factors—

(A) Demonstrated commitment by top management to the error reduction program e.g., priorities and goals clearly enunciated to staff, accountability for performance, availability of resources;

(B) Sufficiency and quality of systems designed to reduce errors that are operational in the State, e.g., BENDEX, IDEX, monthly reporting, retrospective budgeting, error prone profiles, local agency monitoring systems, computer clearances;

(C) Use of effective system and procedures for the statistical and program analysis of QC and related data, e.g., statistical tests, tabulations and cross-tabulations, error prone profiles, corrective action committees, special studies; and

(D) Effective management and execution of the correction action process, e.g., assignment of responsibilities, milestones for completing tasks, completion of tasks, monitoring of progress.

(3) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources is not a basis for finding that a State failed to meet the target error rate despite a good faith effort.

(h) *Disallowances subject to appeal.* If a State does not agree with our decision to reduce (disallow) FFP, it can appeal to us within 45 days from the date of our decision. The regular procedures for appeal of disallowance will apply, including review by the Grant Appeals Board (see 45 CFR Part 16).

(Sec. 1102 of the Social Security Act, 49 Stat. 647, as amended; 42 U.S.C. 1302; Pub. L. 96-38)

[45 FR 6333, Jan. 25, 1980]

§ 205.43 Increase in Federal financial participation (FFP) for States with low error rates.

(a) *Purpose.* (1) This section provides the rules we will use to determine whether we will increase the amount of Federal matching funds (Federal financial participation or FFP) we give to a State and, if so, the amount of the increase. Basically, we will increase the amount of matching funds to States with low error rates in their AFDC program as allowed under rules in this section. These rules apply to all States which have an AFDC program.

(2) We will use the data from the quality control system (see § 205.40) in each State and the Federal monitoring

system in determining the amount of incorrect payments and payments that should have been made. The quality control (QC) system provides data on incorrect payments and nonpayments for every 6-month period.

(b) *Definitions.* For purposes of this section—

"Assistance payment error rate" means the combined dollar amounts of a State's incorrect payments to ineligible families receiving assistance and overpayments and underpayments to eligible families receiving assistance, expressed as a percentage of the State's total payments.

"Dollar error rate" means the error rate obtained by combining the assistance payment error rate for ineligible, overpaid and underpaid cases with an estimated nonpayment error rate that results from incorrect terminations and denials.

"Erroneous excess payments" means the total of erroneous payments to ineligible families receiving assistance and overpayments to eligible families receiving assistance.

"Nonpayment error rate" means the estimated dollar amounts of a State's incorrect terminations and denials, expressed as a percentage of a State's total payments.

"Termination and denial error rate" means the number of a State's incorrect actions to terminate or deny assistance, expressed as a percentage of a State's total number of terminations and denials.

"We" means the Department or the Social Security Administration, as appropriate.

(c) *General.* In these rules we are establishing the basis under which States will receive increased FFP for dollar error rates below 4 percent. The increased FFP will be available beginning with the January–June 1978 quality control sample period and for subsequent periods. Beginning April 1978 the 6-month QC sampling periods will conform with the Federal fiscal year cycle, i.e., April–September, October–March. For each one-half percentage point below 4 percent, in which a State's dollar error rate falls, a State will receive an additional 10 percent of the Federal share of money saved, up to a maximum of 50 percent if the State's dollar error rate is below 2 percent. To figure the amount of increased FFP requires a two step computation. We first establish the dollar error rate. This rate determines a State's eligibility for increased FFP and, for eligible States, the percentage adjustment, between 10 and 50 percent, that will be applied in the 6-month period. The next step is to determine the State's erroneous excess payments and what those payments would have been at a rate of 4 percent. The percentage adjustment is applied to the difference. We describe this process in detail in the following paragraphs of this section.

(d) *How we establish a dollar error rate*—(1) *Information we will use.* We will use the information provided by the Federal/State quality control system. This system measures the dollar amount of incorrect payments and the number of incorrect terminations and denials for every 6-month period.

(2) *How we use the information.* We will obtain a dollar error rate of incorrect payments and nonpayments in the following manner:

(i) We will figure the dollar amount of incorrect payments by multiplying the State assistance payment error rate for ineligibility, overpayments and underpayments by the total of State expenditures to AFDC families subject to sampling under the AFDC QC system in the 6-month period.

(ii) We will figure the dollar amount of incorrect nonpayments as follows:

(A) Obtain a total number of incorrect terminations and denials by multiplying the State's termination and denial error rate by the total number of terminations and denials subject to sampling under the AFDC QC system in the 6-month period; and

(B) Obtain a dollar amount for incorrect nonpayments by multiplying the total number of incorrect terminations and denials in step (A) by the average monthly cash payment made to AFDC QC sample cases in the 6-month period.

(iii) We will obtain the dollar error rate by dividing the sum of the dollar amounts of incorrect payments and nonpayments in steps (i) and (ii) by the total of State expenditures to

AFDC families subject to sampling under the AFDC QC system in the 6-month period.

EXAMPLE.—The total State payments made to AFDC families subject to sampling under the AFDC QC system in a 6-month period are $1,000,000. The assistance payment error rate for ineligibility (1 percent), overpayments (1.4 percent), and underpayments (0.1 percent) is 2.5 percent. This equates to incorrect payments of $25,000 (2.5 percent × $1,000,000). The termination and denial error rate is 0.5 percent. There were 4,000 terminations and denials subject to sampling in the 6-month period and the average monthly cash payment made to AFDC sample cases in the period was $250. Therefore, the estimated incorrect nonpayment dollar amount would be $5,000 (0.5 percent × 4,000 × $250). The dollar error rate is the sum of $25,000 and $5,000 divided by $1,000,000, or 3 percent.

(e) *How increased FFP will be determined*—(1) *What percentage adjustment is applied.* We will apply the following percentage adjustment:

If the dollar error rate is—

	Percentage adjustment applied
4 percent or greater	0
At least 3.5 percent but less than 4 percent	10
At least 3 percent but less than 3.5 percent	20
At least 2.5 percent but less than 3 percent	30
At least 2 percent but less than 2.5 percent	40
Less than 2 percent	50

(2) *How the percentage adjustment is applied.* States with a dollar error rate of less than 4 percent will receive increased FFP. The adjustment percentage provided in paragraph (e)(1) of this section will be applied to the difference between a State's erroneous excess payments and what those payments would have been at a rate of 4 percent.

EXAMPLE.—Using the example in paragraph (d)(2) of this section, the amount of increased FFP would be determined as follows. The amount of erroneous excess payments is obtained by multiplying the combined payment error rate for ineligibility and overpayments (2.4 percent) by the total payments made to AFDC families ($1,000,000). This equates to $24,000. If the combined payment error rate for ineligibility and overpayments were 4 percent the erroneous excess payments would have been $40,000, or $16,000 more. Assuming the Federal share is 50 percent the Federal share of the $16,000 difference would be $8,000. Since the State has a 3 percent dollar error rate the percentage adjustment is 20 percent. The increase in FFP would therefore, by $8,000 × 20 percent, or $1,600.

(Secs. 402, 411, 1102, 1106(a), Social Security Act, as amended; 49 Stat. 647, as amended; 91 Stat. 1561, 53 Stat. 1398, as amended (42 U.S.C. 602, 611, 1302, 1306(a)); and sec. 403 of Pub. L. 95-216, 91 Stat. 1561)

[44 FR 67422, Nov. 26, 1979]

§ 205.45 Federal financial participation in relation to State emergency welfare preparedness.

(a) Under title IV-A, Federal financial participation is available at the rate of 50 percent in expenditures for development and planning activities for emergency welfare preparedness. Such activities must relate to emergency welfare situations resulting from natural disasters, civil disorders, and enemy caused disasters, as prescribed in "Guidelines for the Preparation of State Emergency Welfare Services Plan" issued by Social and Rehabilitation Service, DHHS publication No. (SRS) 72-23004. These activities include:

(1) Safekeeping essential documents and records;

(2) Planning and developing emergency operating capability for providing food, lodging, clothing, and welfare registration and inquiry;

(3) Assuring that qualified individuals are responsible for the planning and operation of each welfare function essential under emergency conditions for care and services for public assistance recipients and potential recipients;

(4) Coordinating with other government and voluntary welfare agencies, and welfare-related business and professional organizations and associations, in developing emergency operating plans and attaining operational readiness;

(5) Preparing and maintaining data on kinds, numbers, and locations of essential welfare resources, including manpower;

(6) Developing ability to assess emergency welfare resources and determining requirements necessary to care for

public assistance cases in the event of disaster or attack;

(7) Preparing plans for claiming and distributing the above resources;

(8) Developing mutual aid agreements at State and local levels with neighboring welfare organizations;

(9) Preparing and distributing written emergency operations plans for public assistance agencies and operating units;

(10) Participating in preparedness exercises for the purpose of testing plans and determining the role of public assistance programs in relation to the overall preparedness program; and

(11) Travel incidental to any of the above activities.

(b) Federal financial participation is available at 75 percent for providing training in emergency welfare preparedness for all staff and for volunteers except that, for Guam, Puerto Rico and the Virgin Islands under title IV-A, the rate is 60 percent.

(c) For Guam, Puerto Rico, and the Virgin Islands, this section is also applicable to public assistance under titles I, X, XIV, and XVI (AABD) of the Social Security Act.

(d) The cost of these activities must be allocated to all programs benefited in accordance with Part 74, Subtitle A of Title 45 of the Code of Federal Regulations.

[41 FR 23387, June 10, 1976]

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* A State plan for financial assistance under title IV-A of the Social Security Act, except as provided in paragraph (d) of this section, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with:

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-C, or IV-D, or under title I, X, XIV, XVI (AABD), XIX, or XX or the supplemental security income program established by title XVI (SSI). Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

(B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs; and

(C) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. Under the requirements of this paragraph (a)(1)(i), disclosure to any committee or legislative body (Federal, State, or local) of any information that identifies by name and address any such applicant or recipient shall be prohibited; and certification of receipt of AFDC to an employer for purposes of claiming tax credit under Pub. L. 94-12, the Tax Reduction Act of 1975, (see § 235.40 of this chapter) shall be considered to be for a purpose directly connected with the administration of the plan.

(ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients:

(iii) Publication of lists or names of applicants and recipients will be prohibited.

(2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement:

(i) Types of information to be safeguarded include but are not limited to:

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (d) of this section);

(B) Information related to the social and economic conditions or circumstances of a particular individual including wage information (see § 205.51) obtained from the agency administering the State unemployment compensation laws or from the Social Security Administration;

(C) Agency evaluation of information about a particular individual;

(D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.

(ii) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs.

(iii) The family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, he will be notified immediately.

(iv) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information.

(v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement official as from any other outside source.

(3)(i) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed.

(ii) All information about wages (including that described in § 205.51) will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information about wages will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications. Under this requirement:

(i) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, voting information, alien registration notices;

(ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information;

(iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency.

(b) [Reserved]

(c) *State plan requirements for programs of financial assistance in Puerto Rico, the Virgin Islands, and Guam.* A State plan under title I, X, XIV, or XVI (AABD) of the Social Security Act must meet all the requirements of paragraph (a) of this section and also provide for disclosure of information concerning applicants and recipients for use by public officials who require such information in connection with their official duties. Under this requirement, such information shall be available only to public officials who certify in writing that:

(1) They are public officials as defined by State or Federal law of general applicability; and

(2) The information to be disclosed and used is required in connection with their official duties.

(d) *Exception.* In respect to a State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act, exception to the requirements of paragraph (a)(1)(iii) of this section may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of

any list or names obtained through such access to such records for commercial or political purposes.

[45 FR 56684, Aug. 25, 1980]

§ 205.51 Definition of wage information.

For purposes of §§ 205.50, 205.56, 205.57, 205.58, 205.60, and 206.10—

(a) Wage information requested from agencies administering State unemployment compensation laws means information about "wages" as defined in the State unemployment compensation laws;

(b) Wage information requested from the Social Security Administration means information about both wages and self-employment income routinely maintained in the Social Security Administration's record systems; and

(c) Wage information also includes the name and address of the employer and the identification number used by the employer in making the wage report.

(Secs. 402, 411, 1102, 1106(a), Social Security Act, as amended; 49 Stat. 647, as amended; 91 Stat. 1561, 53 Stat. 1398, as amended (42 U.S.C. 602, 611, 1302, 1306(a)); and sec. 403 of Pub. L. 95-216, 91 Stat. 1561)

[44 FR 75147, Dec. 19, 1979]

§ 205.56 Access to wage information from agencies administering State unemployment compensation laws and from the Social Security Administration.

A State plan under title IV-A of the Social Security Act must provide that—

(a) The State agency will request wage information about all current AFDC applicants and recipients quarterly from agencies administering the State unemployment compensation laws if those agencies collect wage information. If they do not, the State agency must request the wage information semi-annually from the Social Security Administration.

(b) The State agency will use this wage information for—

(1) Determining individuals' eligibility for aid or services under the State plan;

(2) Determining the amount of aid or services;

(3) Investigations to determine whether recipients received aid or services under the State plan to which they were not entitled; and

(4) Criminal or civil prosecutions based on receipt of aid or services under the State plan to which recipients were not entitled.

(Secs. 402, 411, 1102, 1106(a), Social Security Act, as amended; 49 Stat. 647, as amended; 91 Stat. 1561, 53 Stat. 1398, as amended (42 U.S.C. 602, 611, 1302, 1306(a)); and sec. 403 of Pub. L. 95-216, 91 Stat. 1561)

[44 FR 75147, Dec. 19, 1979]

§ 205.57 Maintenance of an automated file; requests for wage information.

A State plan under title IV-A of the Social Security Act must provide that—

(a) The State agency will maintain a file which is machine-readable, i.e., which is maintained in a fashion that permits automated processing, containing the name and social security number of each person applying for, or receiving, aid or services under the plan.

(b) Requests for wage information will be made in machine-readable form from this file.

(Secs. 402, 411, 1102, 1106(a), Social Security Act, as amended; 49 Stat. 647, as amended; 91 Stat. 1561, 53 Stat. 1398, as amended (42 U.S.C. 602, 611, 1302, 1306(a)); and sec. 403 of Pub. L. 95-216, 91 Stat. 1561)

[44 FR 75147, Dec. 19, 1979]

§ 205.58 Access to wage information; specific agreements between the State agency and the agency supplying the information.

(a) A State plan under title IV-A of the Social Security Act must provide that, in carrying out the requirements of §§ 205.56 and 205.57, the State agency will enter into specific written agreements with agencies administering State unemployment compensation laws, or with the Social Security Administration, if appropriate, detailing the procedures to be used in requesting and providing wage information.

(b) These agreements will include, but need not be limited to, the following:

(1) Identification of all agency officials by position with authority to request wage information;

(2) Methods and timing of the requests for information, including the machine-readable format to be used, and the period of time needed to furnish the requested wage information;

(3) The wage reporting periods for which information will be provided;

(4) Safeguards limiting release or redisclosure as required by Federal or State law or regulation, including the requirements of § 205.50 and 20 CFR 401.105; and

(5) Reimbursement, if any, for the costs of furnishing the information requested by the State agency.

(Secs. 402, 411, 1102, 1106(a), Social Security Act, as amended; 49 Stat. 647, as amended; 91 Stat. 1561, 53 Stat. 1398, as amended (42 U.S.C. 602, 611, 1302, 1306(a)); and sec. 403 of Pub. L. 95-216, 91 Stat. 1561)

[44 FR 75147, Dec. 19, 1979]

§ 205.60 Reports and maintenance of records.

(a) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that:

(1) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, and the provision of financial assistance. Under this requirement, individual records are kept which contain pertinent facts about each applicant and recipient and include information as to the date of application and date and basis of its disposition; facts essential to determination of initial and continuing eligibility, need for, and provision of financial assistance, and basis for discontinuing assistance.

In addition, records kept under a State's IV-A plan will include the individual's social security number.

(2) Under title IV-A, the State agency will establish and maintain statistical records regarding the effect of the use of wage information received from agencies administering State unemployment compensation laws and from the Social Security Administration. The records will include—

(i) The number and dollar value of case closings per month;

(ii) The number and dollar value of grant reductions per month; and

(iii) The number and dollar value of grant increases per month.

[45 FR 56685, Aug. 25, 1980]

§ 205.70 Availability of agency program manuals.

State plan requirements. A State plan for financial assistance under title I, IV-A, IV-B, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Program manuals and other policy issuances which affect the public, including the State agency's rules and regulations governing eligibility, need and amount of assistance, and recipient rights and responsibilities will be maintained in the State office and in each local and district office for examination on regular workdays during regular office hours by individuals, upon request for review, study, or reproduction by the individual.

(b)(1) A current copy of such material will be made available without charge or at a charge related to the cost of reproduction for access by the public through custodians who (i) request the material for this purpose, (ii) are centrally located and publicly accessible to a substantial number of the recipient population they serve, and (iii) agree to accept responsibility for filing all amendments and changes forwarded by the agency.

(2) Under this requirement the material, if requested, must be made available without charge or at a charge related to the cost of reproduction to public or university libraries, the local or district offices of the Bureau of Indian Affairs, and welfare or legal services offices or organizations. The material may also be made available, with or without charge, to other groups and to individuals. Wide availability of agency policy materials is recommended.

(c) Upon request, the agency will reproduce without charge or at a charge related to the cost of reproduction the specific policy materials necessary for an applicant or recipient, or his representative, to determine whether a fair hearing should be requested or to pre-

pare for a fair hearing; and will establish policies for reproducing policy materials without charge, or at a charge related to cost, for any individual who requests such material for other purposes.

[38 FR 26378, Sept. 20, 1973, as amended at 44 FR 17941, Mar. 23, 1979; 45 FR 56685, Aug. 25, 1980]

§ 205.80 Evaluation of the Work Incentive Demonstration Program.

(a) If a State plan for AFDC under title IV-A of the Social Security Act provides for single State agency operation of a Work Incentive Demonstration program under the provisions of section 445 of title IV of the Social Security Act, the State is required to report data which the Secretary determines to be necessary to carry out his responsibility to evaluate the demonstration program. The report shall include, but not be limited to, such data as:

(1) Number of registrants:

(2) Number of registrants who enter full-time employment;

(3) Number of registrants who entered employment who are still employed 30 days later;

(4) Number of registrants whose AFDC grants are reduced or terminated because of participation in a work incentive demonstration program; and

(5) Amount of reduction in AFDC grants due to participation in a work incentive demonstration program.

(b) Such data are to be reported at a schedule to be determined by the Secretary, but not more frequently than quarterly.

(c) The State agency shall cooperate with the Department in the required evaluation of the work incentive demonstration program.

[46 FR 46763, Sept. 21, 1981]

§ 205.100 Single State agency.

(a)(1) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must:

(i) Provide for the establishment or designation of a single State agency with authority to administer or supervise the administration of the plan.

(ii) Include a certification by the attorney general of the State identifying the single State agency and citing the legal authority under which such agency administers, or supervises the administration of, the plan on a statewide basis including the authority to make rules and regulations governing the administration of the plan by such agency or rules and regulations that are binding on the political subdivisions, if the plan is administered by them.

(2) [Reserved]

(b) *Conditions for implementing the requirements of paragraph (a) of this section.* (1) The State agency will not delegate to other than its own officials its authority for exercising administrative discretion in the administration or supervision of the plan including the issuance of policies, rules, and regulations on program matters.

(2) In the event that any rules and regulations or decisions of the single State agency are subject to review, clearance, or other action by other offices or agencies of the State government, the requisite authority of the single State agency will not be impaired.

(3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules, and regulations promulgated by the State agency.

[45 FR 56685, Aug. 25, 1980]

§ 205.101 Organization for administration.

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act shall include a description of the organization and functions of the single State agency and an organizational chart of the agency.

(b) Where applicable, a State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the act shall identify the organizational unit within the State agency which is responsible for operation of the plan

and shall include a description of its organization and functions and an organizational chart of the unit.

[45 FR 56685, Aug. 25, 1980]

§ 205.120 Statewide operation.

(a) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) It shall be in operation, through a system of local offices, on a statewide basis in accordance with equitable standards for assistance and administration that are mandatory throughout the State;

(2) If administered by political subdivisions of the State, the plan will be mandatory on such political subdivisions;

(3) The State agency will assure that the plan is continuously in operation in all local offices or agencies through;

(i) Methods for informing staff of State policies, standards, procedures and instructions; and

(ii) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

[39 FR 16971, May 10, 1974, as amended at 44 FR 17942, Mar. 23, 1979; 45 FR 56686, Aug. 25, 1980]

§ 205.130 State financial participation.

State plan requirements:

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) State (as distiguished from local) funds will be used in both assistance and administration; and

(2) State and Federal funds will be apportioned among the political subdivisions of the State on a basis consistent with equitable treatment of individuals in similar circumstances throughout the State.

(b) A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must provide further that State funds will be used to pay a substantial part of the total costs of the assistance programs.

[45 FR 56686, Aug. 25, 1980]

§ 205.146 Specific limitations on Federal financial participation under title IV-A.

(a) *Penalty for failure to certify WIN registrants.* Pursuant to section 403(c) of the act, notwithstanding any other provision of this chapter, the Federal share of assistance payments under title IV-A of the act, with respect to any State, for any fiscal year beginning on or after July 1, 1973, shall be reduced by 1 percentage point (calculated without regard to any other reduction under this section) for each percentage point by which the number of individuals certified to the manpower agency as ready for employment or training under the State's WIN program falls below 15 percent of the average number of individuals in the State who are required to be registered during such fiscal year. (See § 220.35(b)(5) of this chapter.)

(b) *Penalty for failure to offer and arrange for provision of family planning services under title IV-A of the Act.* Pursuant to section 403(f) of the act, notwithstanding any other provision of this chapter, total payments to a State under title IV-A of the Act, for any fiscal year beginning on or after July 1, 1973, shall be reduced by 1 percent (calculated without regard to any other reduction under this section) if such State:

(1) In the immediately preceding fiscal year failed to carry out the provisions of section 402(a)(15) of the act, which require the offering and arrangement for provision of family planning services, or

(2) In the immediately preceding fiscal year (but in the case of the fiscal year beginning July 1, 1972, considering only the third and fourth quarters thereof), failed to carry out the provisions of section 402(a)(15) of the act with respect to any individual who within 3 months had been an applicant for or a recipient of AFDC under the State's approved title IV-A plan.

This penalty will be applied in accordance with instructions to be issued by SRS.

(c) *Penalty for failure to provide early and periodic screening, diagno-*

80-152 O—82——4

sis and treatment of children under Title XIX of the Act. Pursuant to section 403(g) of the Act, notwithstanding any other provision of this chapter, total payments to a State under Title IV-A of the Act shall be reduced by 1 percentage point (calculated without regard to any other reduction under this section), on a quarterly basis if the State fails to comply with the requirements set forth in 42 CFR 441.70 through 441.90.

(d) *Penalty for failure to have an effective child support enforcement program.* (1) *General.* Pursuant to section 403(h) of the Act, notwithstanding any other provision of this chapter, total payments to a State under title IV-A of the Act for any quarters in any fiscal year, shall be reduced by 5 percent of such payments (calculated without regard to any other reduction under this section), if for such fiscal year a State is found by the Secretary to have failed to have an effective child support enforcement program meeting the requirements of section 402(a)(27), as implemented by Parts 302 and 305 of this title.

(2) *Application of penalty.* (i) The penalty will be imposed for each fiscal year, beginning with F.Y. 77 (but in the case of F.Y. 77, only considering the second, third and fourth quarters thereof.)

(ii) The penalty will be imposed on the basis of the results of the audit conducted pursuant to Part 305 of this title.

(iii) Any penalty imposed under this paragraph will be imposed for the entire fiscal year for which the State was found not to have an effective child support enforcement program.

(e) *Reconsideration of penalty imposition.* Whenever a penalty is imposed under the provisions of this section, the State shall be entitled to and upon request shall receive a reconsideration of the imposition of the penalty in accordance with section 1116(d) of the Social Security Act, and regulations issued thereunder.

[38 FR 26379, Sept. 20, 1973, as amended at 39 FR 29706, Aug. 2, 1974; 41 FR 55346, Dec. 20, 1976; 44 FR 29427, May 18, 1979]

§ 205.150 Cost allocation.

(a) *State plan requirements.* A State plan for financial assistance under titles I,IV—A,XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) The single State Agency will have an approved cost allocation plan on file with the SSA, OFR Regional Commissioner, which identifies and describes the methods ans procedures the State has established for properly charging the costs of administration services (excluding purchased services) and training activities under the plan in accordance with the Federal requirements set out in 45 CFR Part 74, Appendix C, and in Department and SSA, OFA regulations and instructions. Under this requirement, the cost allocation plan shall:

(i) Include descriptions of the functions and activities by organization units; estimated costs for an annual period by cost centers or pools which include the costs of all organizational units of the State department in which the single State agency is located (unless specifically waived by the Regional Commissioner); and the basis used for allocating the various pools of costs to programs and activities with justification for each;

(ii) Contain such other information as is necessary to document the validity of the cost allocation methods and procedures; and

(iii) Include methods and procedures for:

(A) Allocating the costs as specified in this paragraph (a)(1)of the State department in which the State agency is located between federally-aided and non federally-aided programs;

(B) Identifying, of the costs applicable to more than one of the Federally-aided programs, those applicable to each of the separate programs, in accordance with program classifications specified by the Secretary; and

(C) Segregating costs in paragraph (a)(1)(iii)(B) of this section by service and income maintenance functions, where applicable, and by such other classifications as are found necessary by the Secretary:

(2) The single State agency shall revise its cost allocation plan when-

ever the allocation method shown in the existing plan is outdated due to organizational changes within the State agency, changes in Federal law or regulations, or other similar changes.

(b) *Federal financial participation.* (1) As a condition for receipt of Federal financial participation in administration services (excluding purchased services) and training for any quarterly period, a State's claim for such expenditures must be in accord with a cost allocation plan on file with and approved by the Regional Commissioner for that period.

(2) If a State agency fails to submit for any quarter a cost allocation plan revising an outdated plan as required by paragraph (a)(2) of this section, or the submitted revision has not been approved, the Regional Commissioner, in reviewing the expenditures claimed for such quarter, shall: (i) Defer payment of any amount he believes to be overstated; or (ii) disallow any amount which he determines to be overstated.

(3) If a State does not have any cost allocation plan on file with the Regional Commissioner, payment will be made only for those costs of administration, services, and training which are entirely chargeable to a function or activity within a given title having one rate of Federal financial participation. Payment for the remaining cost of administration, services and training which requires an allocation method, will be disallowed.

(4) Any costs disallowed under paragraph (b)(2) and (b)(3) of this section may be reclaimed after the Regional Commissioner approves a cost allocation plan for the quarter for which the expenditures were claimed, to the extent such reclaimed amounts are supported by the approved plan.

(5) Within 60 days of receipt of a cost allocation plan, the Regional Commissioner shall give to the State written notice of approval or written notice of changes required for approval.

(6) The time frames specified in § 201.15 of this chapter and the procedures set forth in § 201.15(c) are applicable to deferral of claims made pursuant to paragraph (b)(2) of this section.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[41 FR 13584, Mar. 31, 1976, as amended at 42 FR 43977, Sept. 1, 1977; 44 FR 17942, Mar. 23, 1979; 45 FR 56686, Aug. 25, 1980]

§ 205.160 Non-expendable personal property.

(a) *Conditions for Federal financial participation.* This section is applicable to titles IV-A (except for social services), and, with respect to Puerto Rico, Virgin Islands and Guam, the cash assistance programs under titles I, X, XIV, and XVI. Federal financial participation is available in amounts expended by a single State agency for a unit of non-expendable personal property having a useful life of more than one year only to the extent of the depreciation expense (or annual use allowance of 6⅔ percent of acquisition cost) applicable to the period for which the property was used under a Federal program or activity; except that:

(1) Amounts expended for non-expendable personal property costing less than $5,000 may be subject to Federal financial participation in full at the time of acquisition at the option of the State agency, except as provided in paragraphs (a) (2) and (3) of this section.

(2) Non-expendable personal property acquired by providers under cost reimbursement contracts with the single State agency shall be capitalized and depreciated (or subject to a use allowance) when it has an acquisition cost of $300 or more. Where the State has title to the property and the contracts provide for return of such property or its residual value upon completion of the contract, the $5,000 limit applies.

(3) Non-expendable personal property acquired by a State and assigned for use to organizational elements of a single State agency, or of the Department in which such agency is located, which are treated as indirect cost centers or pools in an SRS cost allocation plan shall be capitalized and depreciated (or be subject to a use allowance) when it has an acquisition cost of $300 or more, except in the case of indirect costs negotiated by the HHS Office of the Regional Comptroller or by other Federal agencies.

(b) *Definitions.* (1) Acquisition cost is the amount expended by a single

State agency for the property (excluding interest) plus, in the case of property acquired with a trade-in, the book value (acquisition cost less amount depreciated through the date of trade-in) of the property traded in. Property which was expensed when acquired has a book value of zero when traded in.

(2) Depreciation expense for any time period is the portion of the acquisition cost of property which is assignable to that time period. The acquisition cost of the property shall be divided by the number of years of estimated useful service life of the property to arrive at the depreciation expense per year. This method shall be used unless a State obtains approval from the Regional Commissioner to use another method, which must be demonstrated to be more consistent with the using up of the asset.

(3) The number of years of estimated useful service life of property shall be based on the Department of Treasury, Internal Revenue Service policies on depreciation for tax purposes. However, the Regional Commissioner will approve a shorter period if the State agency can document that such period is justified.

(c) *Other administrative requirements*—(1) *Distribution of Costs.* Amounts expended by a single State agency for non-expendable personal property may be directly charged to a program, or to an activity within a program having a separate rate of Federal financial participation, if the property is being exclusively used for the program or activity at the time of the expenditures for the property. Amounts expended for such property not exclusively used for one program or activity shall be allocated to programs or activities by using one of the following methods:

(i) Using cost centers or pools and allocation bases which will distribute the costs consistent with program or activity usage of the property at the time of the expenditures. Any credits for property sold or retained for agency use in non-Federal programs (see § 74.134 of this title) shall be distributed to programs or activities consistent with the distribution methods used for such property expenditures at the time of acquisition; or

(ii) Using a common distribution factor for all property or for classifications of property (e.g. desks distributed based on number of staff employed in each program or activity). Credits for property sold or retained for use in non-Federal programs shall be distributed to programs or activities using the same distribution factors which are applied to expenditures for property acquired in the quarter in which such credits occurred.

(2) *Accountability and management of non-expendable property.* The provisions in paragraph (a)(1) of this section do not affect the requirements on the single State agency to account for and manage non-expendable personal property as defined in § 74.132 of this title, in accordance with the provisions in §§ 74.134 through 74.136 of this title.

(3) *Disposition of Certain Property.* A single State agency shall not request disposition instructions for property with an acquisition cost of over $1,000 per unit as specified in § 74.134(c)(2) of this title, but rather shall sell the property and account for it as specified in § 74.134(c)(1) of this title.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[41 FR 15330, Apr. 12, 1976, as amended at 42 FR 43977, Sept. 1, 1977; 44 FR 17942, Mar. 23, 1979; 44 FR 20432, Apr. 5, 1979]

§ 205.170 State standards for office space, equipment, and facilities.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act must provide that:

(a) The State agency will establish and maintain standards for office space, equipment, and facilities that will adequately and effectively meet program and staff needs. Under this requirement, offices must be well marked and clearly identifiable in the community as a public service.

(b) The State agency will assure that the standards are continuously in effect in all State and local offices or agencies, including agency suboffices, and special centers through:

(1) Making information about the standards available to State and local staff and other appropriate persons;

(2) Regular planned evaluation of housing and facilities by regularly assigned staff through visits, reports, controls and other necessary methods;

(3) Methods for enforcement when necessary to secure compliance with State standards.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980]

§ 205.190 Standard-setting authority for institutions.

(a) *State plan requirements.* If a State plan for financial assistance under title I, X, XIV, or XVI(AABD) of the Social Security Act includes aid or assistance to individuals in institutions as defined in § 233.60(b) (1) and (2) of this chapter the plan must:

(1) Provide for the designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(2) Provide that the State agency will keep on file and make available to SSA, OFA upon request:

(i) A listing of the types or kinds of institutions in which an individual may receive financial assistance;

(ii) A record naming the State authority(ies) responsible for establishing and maintaining standards for such types of institutions;

(iii) The standards to be utilized by such State authority(ies) for approval or licensing of institutions including, to the extent applicable, standards related to the following factors:

(*a*) Health (dietary standards and accident prevention);

(*b*) Humane treatment;

(*c*) Sanitation;

(*d*) Types of construction;

(*e*) Physical facilities, including space and accommodations per person;

(*f*) Fire and safety,

(*g*) Staffing, in number and qualifications, related to the purposes and scope of services of the institution;

(*h*) Resident records;

(*i*) Admission procedures;

(*j*) Administrative and fiscal records;

(*k*) The control by the individual, or his guardian or protective payee, of the individual's personal affairs.

(3) Provide for cooperative arrangements with the standard-setting authority(ies) in the development of standards directed toward assuring adequate quality of care; in upgrading of institutional programs and practice; in actions necessary to close institutions that mistreat or are hazardous to the safety of the patients; and in planning so that institutions may be geographically located in accordance with need.

(b) *Federal financial participation.* (1) Federal financial participation is available in staff and related costs of the State or local agency that are necessary to discharge the responsibilities of the State agency under this section, including such costs for staff:

(i) Participating with other agencies and community groups in activities to set up the authority(ies) and to advise on the formulation of policy for the establishment and maintenance of standards;

(ii) On loan for a time limited period to work with the standard-setting authority(ies) in upgrading institutional care;

(iii) Engaged in the function of coordination in States where there is more than one authority; and

(iv) Engaged in adjusting complaints and making reports and recommendations to the standard-setting authority(ies) on conditions which appear to be in violation of such standards.

(2) Federal financial participation is not available in the costs incurred by the standard-setting authority(ies) in establishing and maintaining standards for institutions.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980]

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD), of the Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement:

(i) Each individual may apply under whichever of the State plan plans he chooses;

(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibily for him;

(iii) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the agency and when so accompanied may also be represented by them.

(b) For assistance under title IV–A prior to July 1, 1975, the agency shall request on the application the social security number (SSN) of each individual (including children) for whom assistance is requested. Under this requirement, the agency shall advise the applicant whether disclosure of such number is mandatory or voluntary, by what statute or other authority such number is requested, and what uses will be made of it. Disclosure of the SSN may be made mandatory only if the State had in existence and operating prior to January 1, 1975, a system of welfare or Medicaid records for which disclosure of the SSN was required, by statute or regulation, in order to verify the identity of the individual. If any individual cannot provide a SSN either because he has not been issued one or he does not know his SSN, and wishes to secure one, the agency shall assist him in filling out an application for such number on such forms and under such procedures as may be required by the Social Security Administration (SSA) and shall transmit it to the SSA. Under this requirement, the agency shall also obtain such evidence as may be required under SSA regulations to establish the age, citizenship or alien status, and true identity of such applicant, and, where the case record attests that a previous social security number has been issued, request verification of the number by SSA. Where disclosure of the SSN is voluntary, no individual who is otherwise eligible shall be denied assistance because of failure or refusal to disclose or apply for a SSN, and the individual shall be so informed.

(c) The agency shall not deny or delay assistance to an eligible individual pending issuance by SSA or verification by the agency of his SSN.

(2)(i) Applicants shall be informed about the eligiblity requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms are publicized and available in quantity.

(ii) Procedures shall be adopted which are designed to assure that recipients make timely and accurate reports of any change in circumstances which may affect their eligibility or the amount of assistance.

(3) A decision shall be made promptly on applications, pursuant to reasonable State-established time standards not in excess of:

(i) 45 days for OAA, AFDC, AB, AABD (for aged and blind); and

(ii) 60 days for APTD, AABD (for disabled). Under this requirement, the applicant is informed of the agency's time standard in acting on applications, which covers the time from date of application under the State plan to the date that the assistance check, or notification of denial of assistance or change of award is mailed to the applicant or recipient. The State's time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency), in which in-

stances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility shall not be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual's right to request a hearing.

(5)(i) Financial assistance and medical care and services included in the plan shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process, and shall be continued regularly to all eligible individuals until they are found to be ineligible. Under this requirement there must be arrangements to assist applicants and recipients in obtaining medical care and services in emergency situations on a 24-hour basis, 7 days a week.

(ii) Under title IV-A, assistance will not be denied, delayed or discontinued pending receipt of wage information requested under § 205.56, if other evidence establishes the individual's eligibility for assistance.

(6) Assistance shall begin as specified in the State plan, which:

(i) For financial assistance.

(A) Must be no later than:

(*1*) The date of authorization of payment, or

(*2*) Thirty days in OAA, AFDC, AB, and AABD (as to the aged and blind), and 60 days in APTD and AABD (as to the disabled), from the date of receipt of a signed and completed application form, whichever is earlier: *Provided,* That the individuals then met all the eligibility conditions, and

(B) For purposes of Federal financial participation, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions; and

(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of § 205.10 of this chapter.

(8) Each decision regarding eligibility or ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement each application is disposed of by a finding of eligibility or ineligibility unless:

(i) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the agency that he does not desire to pursue his application; or

(ii) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;

(ii) Promptly, after a report is obtained which indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or may make him ineligible; and

(iii) Periodically, within agency-established time standards, but not less frequently than every 6 months in AFDC, and every 12 months in OAA, AB, APTD, and AABD, on eligibility factors subject to change.

(A) For recipients of assistance under title IV-A, the agency shall verify that the case record contains a social security number (SSN) for each recipient, including children; if the case record does not contain a SSN, the agency shall follow the procedures set forth in paragraph (a)(1)(v) of this section for the purpose of obtaining a SSN; and

(B) For any recipient whose social security number was established as part of the case record without corroborative evidence of age, citizenship or alien status, and true identity, the agency shall obtain verification there-

of under the procedures set forth in paragraph (a)(1)(v) of this section.

(10) Standards and methods for determination of eligibility shall be consistent with the objectives of the programs, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(11) [Reserved]

(12) The State agency shall establish and maintain methods by which it shall be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it shall take corrective action when necessary.

(b) *Definitions.* For purposes of this section:

(1) "Applicant" is a person who has, directly, or through his authorized representative, or where incompetent or incapacitated, through someone acting responsibly for him, made application for public assistance from the agency administering the program, and whose application has not been terminated.

(2) "Application" is the action by which an individual indicates in writing to the agency administering public assistance his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance.

Such inquiry may be followed by an application.

(Sec. 402, 411, 1102, 1106(a), Social Security Act, as amended; 49 Stat. 647, as amended; 91 Stat. 1561, 53 Stat. 1398, as amended (42 U.S.C. 602, 611, 1302, 1306(a)); and sec. 403 of Pub. L. 95-216, 91 Stat. 1561)

[38 FR 22009, Aug. 15, 1973, as amended at 44 FR 17943, Mar. 23, 1979; 44 FR 26082, May 4, 1979; 44 FR 75147, Dec. 19, 1979; 46 FR 46763, Sept. 21, 1981]

PART 208—ASSISTANCE TO AGED INDIVIDUALS IN INSTITUTIONS FOR MENTAL DISEASES

§ 208.1 Assistance to individuals 65 years of age or older in institutions for mental diseases.

(a) *State plan requirements.* A State plan under title I, or XVI, of the Social Security Act which includes assistance to or in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases must provide for:

(1) Having in effect written agreements with the State authority (or authorities) concerned with mental diseases, and with those individual institutions not under the jurisdiction of such State authorities, in which assistance is provided, which clearly set forth the respective responsibilities of the State agency and the State authorities or institutions, with respect to the individuals to whom or on whose behalf payments are made, including arrangements for:

(i) Joint planning and for development of alternate methods of care;

(ii) Immediate readmittance to the institutions when needed for individuals in alternate methods of care;

(iii) Access by appropriate representatives of the State agency to the medical facility, the patient, and the patient's records as necessary for carrying out the State agency's responsibilities;

(iv) Necessary recording, reporting, exchange of medical and social information, and other procedures.

(2) A recorded individual plan of treatment and care to assure that the institutional care provided serves the best interest of each patient, i.e., maintains the patient at or restores him to the greatest possible degree of health and independent functioning, including:

(i) Initial and periodic review of his medical, psychiatric and social needs. In fulfilling this requirement initial reviews shall be conducted for each patient not later than 90 days after approval of the State plan, and for each recipient-patient subsequently included, not later than 30 days after payments are initiated in his behalf;

(ii) Appropriate medical treatment within the institution;

(iii) Periodic determination of his need for continued treatment in the institution and for alternate care arrangements. In fulfilling this requirement such determinations shall be conducted at least quarterly;

(iv) Appropriate social services.

(3) The development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, to meet their medical, social, and financial needs.

(4) Making available social services referred to in section 3(a)(4)(A) (i) and (ii) or section 1603(a)(4)(A) (i) and (ii) of this Act which are appropriate for such recipients.

(5) Methods of determining the reasonable cost of institutional care for such patients in compliance with 42 CFR Part 447, Subpart C.

(6) Methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out.

(7) If the State plan includes patients in public institutions for mental diseases, showing that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program for all age groups, through appropriate mental health and public welfare resources, including provision for utilization of community mental health centers, nursing homes and other alternatives to care in public institutions; for arrangements for joint planning with the State authority(ies) for this purpose; and for annual reports showing the progress made. In fulfilling this requirement such annual reports are to be submitted within three months after the close of each fiscal year in which the State has a program of assistance to individuals 65 years of age or older in public institutions for mental diseases.

(b) *Federal financial participation.* (1) Federal payments in relation to title I or XVI of the act under this section for any quarter shall be made only to the extent that total expenditures in the State from Federal, State, and local sources for mental health services for such quarter exceed the average of the total expenditures for such services for each quarter of the fiscal year ending June 30, 1965. As a basis for determination of the proper amount of Federal payments, the State agency shall submit to the Secretary annual reports which show total expenditures from Federal, State, and local sources for mental health services (including payment to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs including total expenditures for each quarter of the fiscal year ending June 30, 1965, and total expenditures for each quarter in which the State has received Federal financial participation in making payments in behalf of individuals 65 years of age or over in institutions for mental diseases; and which show for each quarter all assistance payments and administrative costs incurred in behalf of individuals 65 years of age or older in institutions for mental diseases, and of Federal shares of such payments and such costs. In fulfilling this requirement such reports should be submitted not later than 3 months after the close of the fiscal year.

(2) For purposes of this section, an institution for mental diseases is one that meets the definition contained in 42 CFR 440.140.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302)

[36 FR 3865, Feb. 27, 1971, as amended at 38 FR 12112, May 9, 1973; 44 FR 17944, Mar. 23, 1979]

PART 211—CARE AND TREATMENT OF MENTALLY ILL NATIONALS OF THE UNITED STATES, RETURNED FROM FOREIGN COUNTRIES

Sec.

211.1 General definitions.
211.2 General.
211.3 Certificates.
211.4 Notification to legal guardian, spouse, next of kin, or interested persons.
211.5 Action under State law; appointment of guardian.
211.6 Reception; temporary care, treatment, and assistance.

Sec.
211.7 Transfer and release of eligible person.
211.8 Continuing hospitalization.
211.9 Examination and reexamination.
211.10 Termination of hospitalization.
211.11 Request for release from hospitalization.
211.12 Federal payments.
211.13 Financial responsibility of the eligible person; collections, compromise, or waiver of payment.
211.14 Disclosure of information.
211.15 Nondiscrimination.

AUTHORITY: Secs. 1-11, 74 Stat. 308-310; 24 U.S.C. 321-329.

SOURCE: 39 FR 26546, July 19, 1974, unless otherwise noted.

§ 211.1 General definitions.

When used in this part:

(a) "Act" means Public Law 86-571, approved July 5, 1960, 74 Stat. 308, entitled "An Act to provide for the hospitalization, at Saint Elizabeths Hospital in the District of Columbia or elsewhere, of certain nationals of the United States adjudged insane or otherwise found mentally ill in foreign countries, and for other purposes";

(b) The term "Secretary" means the Secretary of Health and Human Services;

(c) The term "Department" means the Department of Health and Human Services;

(d) The term "Administrator" means the Administrator, Social and Rehabilitation Service, Department of Health and Human Services;

(e) The term "eligible person" means an individual with respect to whom the certificates referred to in § 211.3 are furnished to the Administrator in connection with the reception of an individual arriving from a foreign country;

(f) The term "Public Health Service" means the Public Health Service in the Department of Health and Human Services;

(g) The term "agency" means an appropriate State or local public or nonprofit agency with which the Administrator has entered into arrangements for the provision of care, treatment, and assistance pursuant to the Act;

(h) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(i) The term "residence" means residence as determined under the applicable law or regulations of a State or political subdivision for the purpose of determining the eligibility of an individual for hospitalization in a public mental hospital;

(j) The term "legal guardian" means a guardian, appointed by a court, whose powers, duties, and responsibilities include the powers, duties, and responsibilities of guardianship of the person.

§ 211.2 General.

The Administrator shall make suitable arrangements with agencies to the end that any eligible person will be received, upon request of the Secretary of State, at the port of entry or debarkation upon arrival in the United States from a foreign country and be provided, to the extent necessary, with temporary care, treatment, and assistance, pending transfer and release or hospitalization pursuant to the Act. The Administrator shall also make suitable arrangements with appropriate divisions of the Public Health Service, with Saint Elizabeths Hospital in the District of Columbia, with Federal hospitals outside of the Department, or with other public or private hospitals to provide the eligible person with care and treatment in a hospital. The Administrator shall maintain a roster setting forth the name and address of each eligible person currently receiving care and treatment, or assistance, pursuant to the Act.

§ 211.3 Certificates.

The following certificates are necessary to establish that an individual is an eligible person:

(a) *Certificates as to nationality.* A certificate issued by an authorized official of the Deparmtment of State, stating that the individual is a national of the United States.

(b) *Certificate as to mental condition.* Either (1) a certificate obtained or transmitted by an authorized official of the Department of State that the individual has been legally adjudged insane in a named foreign

country; or (2) a certificate of an appropriate authority or person stating that at the time of such certification the individual was in a named foreign country and was in need of care and treatment in a mental hospital. A statement shall, if possible, be incorporated into or attached to the certificate furnished under this paragraph setting forth all available medical and other pertinent information concerning the individual.

(c) *Appropriate authority or person.* For the purpose of paragraph (b)(2) of this section a medical officer of the Public Health Service or of another agency of the United States, or a medical practitioner legally authorized to provide care or treatment of mentally ill persons in the foreign country, is an "appropriate authority or person," and shall be so identified in his execution of the certificate. If such a medical officer or practitioner is unavailable, an authorized official of the Department of State may serve as an "appropriate authority or person," and shall, in the execution of the certificate, identity himself as serving as such person due to the unavailability of a suitable medical officer or practitioner.

§ 211.4 Notification to legal guardian, spouse, next of kin, or interested persons.

(a) Whenever an eligible person arrives in the United States from a foreign country, or when such person is transferred from one State to another, the Administrator shall, upon such arrival or transfer (or in advance thereof, if possible), provide for notification of his legal guardian, or in the absence of such a guardian, of his spouse or next of kin, or in the absence of any of these, of one or more interested persons, if known.

(b) Whenever an eligible person is admitted to a hospital pursuant to the Act, the Administrator shall provide for immediate notification of his legal guardian, spouse, or next of kin, if known.

§ 211.5 Action under State law; appointment of guardian.

Whenever an eligible person is incapable of giving his consent to care and treatment in a hospital, either because of his mental condition or because he is a minor, the agency will take appropriate action under State law, including, if necessary, procuring the appointment of a legal guardian, to ensure the proper planning for and provision of such care and treatment.

§ 211.6 Reception; temporary care, treatment, and assistance.

(a) *Reception.* The agency will meet the eligible person at the port of entry or debarkation, will arrange for appropriate medical examination, and will plan with him, in cooperation with his legal guardian, or, in the absence of such a guardian, with other interested persons, if any, for needed temporary care and treatment.

(b) *Temporary care, treatment, and assistance.* The agency will provide for temporary care, treatment, and assistance, as reasonably required for the health and welfare of the eligible person. Such care, treatment, and assistance may be provided in the form of hospitalization and other medical and remedial care (including services of necessary attendants), food and lodging, money, payments, transportation, or other goods and services. The agency will utilize the Public Health Service General Hospital nearest to the port of entry or debarkation or any other suitable public or private hospital, in providing hospitalization and medical care, including diagnostic service as needed, pending other appropriate arrangements for serving the eligible person.

§ 211.7 Transfer and release of eligible person.

(a) *Transfer and release to relative.* If at the time of arrival from a foreign country or any time during temporary or continuing care and treatment the Administrator finds that the best interests of the eligible person will be served thereby, and a relative, having been fully informed of his condition, agrees in writing to assume responsibility for his care and treatment, the Administrator shall transfer and release him to such relative. In determining whether his best interest will be served by such transfer and release,

due weight shall be given to the relationship of the individuals involved, the financial ability of the relative to provide for such person, and the accessibility to necessary medical facilities.

(b) *Transfer and release to appropriate State authorities, or agency of the United States.* If appropriate arrangements cannot be accomplished under paragraph (a) of this section, and if no other agency of the United States is responsible for the care and treatment of the eligible person, the Administrator shall endeavor to arrange with the appropriate State mental health authorities of the eligible person's State of residence or legal domicile, if any, for the assumption of responsibility for the care and treatment of the eligible person by such authorities and shall, upon the making of such arrangements in writing, transfer and release him to such authorities. If any other agency of the United States is responsible for the care and treatment of the eligible person, the Administrator shall make arrangements for his transfer and release to that agency.

§ 211.8 Continuing hospitalization.

(a) *Authorization and arrangements.* In the event that appropriate arrangements for an eligible person in need of continuing care and treatment in a hospital cannot be accomplished under § 211.7, or until such arrangements can be made, care and treatment shall be provided by the Administrator in Saint Elizabeths Hospital in the District of Columbia, in an appropriate Public Health Service Hospital, or in such other suitable public or private hospital as the Administrator determines is in the best interests of such person.

(b) *Transfer to other hospital.* At any time during continuing hospitalization, when the Administrator deems it to be in the interest of the eligible person or of the hospital affected, the Administrator shall authorize the transfer of such person from one hospital to another and, where necessary to that end, the Administrator shall authorize the initiation of judicial proceedings for the purpose of obtaining a commitment of such person to the Secretary.

(c) *Place of hospitalization.* In determining the placement or transfer of an eligible person for purposes of hospitalization, due weight shall be given to such factors as the location of the eligible person's legal guardian or family, the character of his illness and the probable duration thereof, and the facilities of the hospital to provide care and treatment for the particular health needs of such person.

§ 211.9 Examination and reexamination.

Following admission of an eligible person to a hospital for temporary or continuing care and treatment, he shall be examined by qualified members of the medical staff as soon as practicable, but not later than the fifth day after his admission. Each such person shall be reexamined at least once within each six month period beginning with the month following the month in which he was first examined.

§ 211.10 Termination of hospitalization.

(a) *Discharge or conditional release.* If, following an examination, the head of the hospital finds that the eligible person hospitalized for mental illness (whether or not pursuant to a judicial commitment) is not in need of such hospitalization, he shall be discharged. In the case where hospitalization was pursuant to a judicial commitment, the head of the hospital may, in accordance with laws governing hospitalization for mental illness as may be in force and generally applicable in the State in which the hospital is located, conditionally release him if he finds that this is in his best interests.

(b) *Notification to committing court.* In the case of any person hospitalized under § 211.8 who has been judicially committed to the custody of the Secretary, the Secretary will notify the committing court in writing of the discharge or conditional release of such person under this section or of his transfer and release under § 211.7.

§ 211.11 Request for release from hospitalization.

If an eligible person who is hospitalized pursuant to the Act, or his legal guardian, spouse, or adult next of kin,

requests his release, such request shall be granted by the Administrator if his best interests will be served thereby, or by the head of the hospital if he is found not to be in need of hospitalization by reason of mental illness. The right of the administrator or the head of the hospital, to refuse such request and to detain him for care and treatment shall be determined in accordance with laws governing the detention, for care and treatment, of persons alleged to be mentally ill as may be in force and applicable generally in the State in which such hospital is located, but in no event shall the patient be detained more than forty-eight hours (excluding any period of time falling on a Sunday or a legal holiday observed by the courts of the State in which such hospital is located) after the receipt of such request unless within such time (a) judicial proceedings for such hospitalization are commenced or (b) a judicial extension of such time is obtained, for a period of not more than five days, for the commencement of such proceedings.

§ 211.12 Federal payments.

The arrangements made by the Administrator with an agency or hospital for carrying out the purposes of the Act shall provide for payments to such agency or hospital, either in advance or by way of reimbursement, of the costs of reception, temporary care, treatment, and assistance, continuing care and treatment, and transportation, pursuant to the Act, and payments for other expenditures necessarily and reasonably related to providing the same. Such arrangements shall include the methods and procedures for determining the amounts of the advances or reimbursements, and for remittance and adjustment thereof.

§ 211.13 Financial responsibility of the eligible person; collections, compromise, or waiver of payment.

(a) *For temporary care and treatment.* If an eligible person receiving temporary care, treatment, and assistance, pursuant to the Act, has financial resources available to pay all or part of the costs of such care, the Administrator shall require him to pay for such costs, either in advance or by way of reimbursement, unless in his judgment it would be inequitable or impracticable to require such payment.

(b) *For continuing care and treatment.* Any eligible person receiving continuing care and treatment in a hospital, or his estate, shall be liable to pay or contribute toward the payment of the costs or charges therefor, to the same extent as such person would, if a resident of the District of Columbia, be liable to pay, under the laws of the District of Columbia, for his care and maintenance in a hospital for the mentally ill in that jurisdiction.

(c) *Collections, compromise, or waiver of payment.* The Administrator may, in his discretion, where in his judgment substantial justice will be best served thereby or the probable recovery will not warrant the expense of collection, compromise, or waive the whole or any portion of, any claim for continuing care and treatment, and assistance, and in the process of arriving at such decision, the Administrator may make or cause to be made such investigations as may be necessary to determine the ability of the patient to pay or contribute toward the cost of his continuing care and treatment in a hospital.

§ 211.14 Disclosure of information.

(a) No disclosure of any information of a personal and private nature with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be directed by the order of a court of competent jurisdiction;

(4) As disclosure may be necessary to carry out any functions of any agency of the United States which are related

to the return of the individual from a foreign country, or his entry into the United States; or

(5) As expressly authorized by the Administrator.

(b) An agreement made with an agency or hospital for care, treatment, and assistance pursuant to the Act shall provide that no disclosure will be made of any information of a personal and private nature received by such agency or hospital in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Administrator.

(c) Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to the presence of an eligible person in a hospital, or as to his general condition and progress.

§ 211.15 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin, be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits, under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimination either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Administrator or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception, temporary care, treatment, and assistance, and continuing hospitalization under the Act.

PART 212—ASSISTANCE FOR UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES

Sec.

212.1 General definitions.
212.2 General.
212.3 Eligible person.
212.4 Reception; initial determination, provisions of temporary assistance.
212.5 Periodic review and redetermination; termination of temporary assistance.
212.6 Duty to report.
212.7 Repayment to the United States.
212.8 Federal payments.
212.9 Disclosure of information.
212.10 Nondiscrimination.

AUTHORITY: Sec. 302, 75 Stat. 142, sec. 1102, 49 Stat. 647; 42 U.S.C. 1313, 1302.

SOURCE: 39 FR 26548, July 19, 1974, unless otherwise noted.

§ 212.1 General definitions.

When used in this part:

(a) "Act" means section 1113 of the Social Security Act, as amended;

(b) The term "Secretary" means the Secretary of Health and Human Services;

(c) The term "Department" means the Department of Health and Human Services;

(d) The term "Service" means the Social and Rehabilitation Service, Department of Health and Human Services;

(e) The term "Administrator" means the Administrator, Social and Rehabilitation Service;

(f) The term "eligible person" means an individual with respect to whom the conditions in § 212.3 are met;

(g) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) The term "United States" when used in a geographical sense means the States;

(i) The term "agency" means State or local public agency or organization or national or local private agency or organization with which the Administrator has entered into agreement for the provision of temporary assistance pursuant to the Act;

(j) The term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health, or welfare of individuals, including guidance, counseling, and other welfare services.

§ 212.2 General.

The Administrator shall develop plans and make arrangements for provision of temporary assistance within the United States to any eligible person, after consultation with appropriate offices of the Department of

State, the Department of Justice, and the Department of Defense. Temporary assistance shall be provided, to the extent feasible, in accordance with such plans, as modified from time to time by the Administrator. The Administrator shall enter into agreements with agencies whose services and facilities are to be utilized for the purpose of providing temporary assistance pursuant to the Act, specifying the conditions governing the provision of such assistance and the manner of payment of the cost of providing therefor.

§ 212.3 Eligible person.

In order to establish that an individual is an eligible person, it must be found that:

(a) He is a citizen of the United States or a dependent of a citizen of the United States;

(b) A written statement has been transmitted to the Service by an authorized official of the Department of State containing information which identifies him as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States, or the illness of such citizen or any of his dependents, or because of war, threat of war, invasion, or similar crisis. Such statement shall, if possible, incorporate or have attached thereto, all available pertinent information concerning the individual. In case of war, threat of war, invasion, or similar crisis, a determination by the Department of State that such a condition is the general cause for the return of citizens of the United States and their dependents from a particular foreign country, and evidence that an individual has returned, or, been brought, from such country to the United States shall be considered sufficient identification of the reason for his return to, or entry into the United States; and

(c) He is without resources immediately accessible to meet his needs.

§ 212.4 Reception; initial determination, provisions of temporary assistance.

(a) The Service, or the agency upon notification by the Service, will meet individuals, identified as provided in § 212.3(b), at the port of entry or debarkation.

(b) The Service or agency will make findings, setting forth the pertinent facts and conclusions, and an initial determination, according to standards established by the Service, as to whether an individual is an eligible person.

(c) The Service or agency will provide temporary assistance within the United States to an eligible person, according to standards of need established by the Service, upon arrival at the port of entry or debarkation, during transportation to his intermediate and ultimate destinations, and after arrival at such destinations.

(d) Temporary assistance may be furnished only for 90 days from the day of arrival of the eligible person in the United States unless he is handicapped in attaining self-support or self-care for such reasons as age, disability, or lack of vocational preparation. In such cases temporary assistance may be extended upon prior authorization by the Service for nine additional months.

(Sec. 1102, 49 Stat. 647, (42 U.S.C. 1302))

[39 FR 26548, July 19, 1974, as amended at 40 FR 43218, Sept. 19, 1975]

§ 212.5 Periodic review and redetermination; termination of temporary assistance.

(a) The Service or agency will review the situation of each recipient of temporary assistance at frequent intervals to consider whether or not circumstances have changed that would require a different plan for him.

(b) Upon a finding by the Service or agency that a recipient of temporary assistance has sufficient resources available to meet his needs, temporary assistance shall be terminated.

§ 212.6 Duty to report.

The eligible person who receives temporary assistance, or the person who is caring for or otherwise acting on behalf of such eligible person, shall report promptly to the Service or agency any event or circumstance which would cause such assistance to be changed in amount or terminated.

§ 212.7 Repayment to the United States.

(a) An individual who has received temporary assistance shall be required to repay, in accordance with his ability, any or all of the cost of such assistance to the United States, except insofar as it is determined that:

(1) The cost is not readily allocable to such individual;

(2) The probable recovery would be uneconomical or otherwise impractical;

(3) He does not have, and is not expected within a reasonable time to have, income and financial resources sufficient for more than ordinary needs; or

(4) Recovery would be against equity and good conscience.

(b) In determining an individual's resources, any claim which he has against any individual, trust or estate, partnership, corporation, or government shall be considered, and assignment to the United States of such claims shall be taken in appropriate cases.

(c) A determination that an individual is not required to repay the cost of temporary assistance shall be final and binding, unless such determination was procured by fraud or misrepresentation of the individual or some other person, or the individual voluntarily offers to repay.

(d) A determination that an individual is required to repay any or all of the cost of temporary assistance may be reconsidered at any time prior to repayment of the required amount. A further determination shall be made with respect to his liability to repay the balance of such amount on the basis of new evidence as to whether (1) he has, or is expected within a reasonable time to have, income and financial resources sufficient for more than ordinary needs, or (2) recovery would be against equity and good conscience.

§ 212.8 Federal payments.

The agreement made by the Administrator with an agency for carrying out the purposes of the Act shall provide for payment to such agency, either in advance or by way of reimbursement, of the cost of temporary assistance provided pursuant to the Act, and payment of the cost of other expenditures necessarily and reasonably related to providing the same. Such agreement shall include the cost of other expenditures necessarily and reasonably related to providing the same. Such agreement shall include the method for determining such costs, as well as the methods and procedures for determining the amounts of advances or reimbursement and for remittance and adjustment thereof.

§ 212.9 Disclosure of information.

(a) No disclosures of any information of a personal and private nature with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be necessary to carry out any functions of any agency of the United States which are related to the return of the individual from a foreign country, or his entry into the United States; or

(4) As expressly authorized by the Administrator.

(b) An agreement made with an agency for the provision of temporary assistance pursuant to the Act shall provide that no disclosure will be made of any information of a personal and private nature received by such agency in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Administrator.

§ 212.10 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimina-

tion either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Service or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception and temporary assistance under the Act.

PART 213—PRACTICE AND PROCEDURE FOR HEARINGS TO STATES ON CONFORMITY OF PUBLIC ASSISTANCE PLANS TO FEDERAL REQUIREMENTS

Subpart A—General

Sec.

213.1 Scope of rules.
213.2 Records to be public.
213.3 Use of gender and number.
213.4 Suspension of rules.
213.5 Filing and service of papers.

Subpart B—Preliminary Matters—Notice and Parties

213.11 Notice of hearing or opportunity for hearing.
213.12 Time of hearing.
213.13 Place.
213.14 Issues at hearing.
213.15 Request to participate in hearing.

Subpart C—Hearing Procedures

213.21 Who presides.
213.22 Authority of presiding officer.
213.23 Rights of parties.
213.23a Discovery.
213.24 Evidentiary purpose.
213.25 Evidence.
213.26 Exclusion from hearing for misconduct.
213.27 Unsponsored written material.
213.28 Official transcript.
213.29 Record for decision.

Subpart D—Posthearing Procedures, Decisions

213.31 Posthearing briefs.
213.32 Decisions following hearing.
213.33 Effective date of Administrator's decision.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: 36 FR 1454, Jan. 29, 1971, unless otherwise noted.

Subpart A—General

§ 213.1 Scope of rules.

(a) The rules of procedure in this part govern the practice for hearings afforded by the Department to States pursuant to §§ 201.4 or 201.6 (a) or (b) of this chapter, and the practice relating to decisions upon such hearings. These rules may also be applied to hearings afforded by the Department to States in other Federal-State programs for which Federal administrative responsibility has been delegated to the Service.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this part, except as expressly provided herein.

§ 213.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the SRS Hearing Clerk. Inquiries may be made at the Central Information Center, Department of Health and Human Services, 330 Independence Avenue SW., Washington, DC 20201.

§ 213.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 213.4 Suspension of rules.

Upon notice to all parties, the Administrator or the presiding officer, with respect to matters pending before him and within his jurisdiction, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

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§ 213.5 Filing and service of papers.

(a) All papers in the proceedings shall be filed with the SRS Hearing Clerk, in an original and two copies. Originals only of exhibits and transcripts of testimony need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated attorney will be deemed service upon the party.

Subpart B—Preliminary Matters—Notice and Parties

§ 213.11 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Administrator to the State. The notice shall state the time and place for the hearing, and the issues which will be considered, and shall be published in the FEDERAL REGISTER.

§ 213.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State.

§ 213.13 Place.

The hearing shall be held in the city in which the regional office of the Department is located or in such other place as is fixed by the Administrator in light of the circumstances of the case, with due regard for the convenience and necessity of the parties or their representatives.

§ 213.14 Issues at hearing.

(a) The Administrator may, prior to a hearing under § 201.6 (a) or (b) of this chapter, notify the State in writing of additional issues which will be considered at the hearing, and such notice shall be published in the FEDERAL REGISTER. If such notice is furnished to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after such notice was furnished, or such later date as may be agreed to by the Administrator.

(b) If, as a result of negotiations between the Department and the State, the submittal of a plan amendment, a change in the State program, or other actions by the State, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Administrator, the hearing shall proceed on such new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Administrator finds that the State has come into compliance with Federal requirements on any issue, in whole or in part, he shall remove such issue from the proceedings in whole or in part, as may be appropriate. If all issues are removed, he shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Administrator shall provide all parties other than the Department and the State (see § 213.15(b)) with the statement of his intention, and the reasons therefor, and a copy of the proposed State plan provision on which the State and he have settled, and the parties shall have opportunity to submit in writing within 15 days, for the Administrator's consideration and for the record, their views as to, or any information bearing upon, the merits of the proposed plan provision and the merits of the Administrator's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 213.11 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 213.15 Request to participate in hearing.

(a) The Department and the State are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have caused them injury and their in-

terest is within the zone of interests to be protected by the governing Federal statute.

(2) Any individual or group wishing to participate as a party shall file a petition with the SRS Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and shall serve a copy on each party of record at that time, in accordance with § 213.5(b). Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments thereon.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the presiding officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on his petition, and if the petition is denied, he shall briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the SRS Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. He may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

Subpart C—Hearing Procedures

§ 213.21 Who presides.

(a) The presiding officer at a hearing shall be the Administrator or his designee.

(b) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

[39 FR 40850, Nov. 21, 1974]

§ 213.22 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. He shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part. In hearings pursuant to section 1116(a)(2) of the Social Security Act (see § 201.4 of this chapter), changes of time are subject to the requirements of the statute.

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him including issuance of protective orders or other relief to a party against whom discovery is sought.

(6) Regulate the course of the hearing and conduct of counsel therein.

(7) Examine witnesses.

(8) Receive, rule on, exclude or limit evidence or discovery.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(10) If the presiding officer is the Administrator, make a final decision.

(11) If the presiding officer is a hearing examiner, certify the entire record including his recommended findings and proposed decision to the Administrator.

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551–559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) If the presiding officer is a hearing examiner, his authority pertains to the issues of compliance by a State with Federal requirements which are to be considered at the hearing, and does not extend to the question of whether, in case of any noncompliance, Federal payments will not be made in respect to the entire State plan or will be limited to categories under or parts of the State plan affected by such noncompliance.

[40 FR 50272, Oct. 29, 1975]

§ 213.23 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 213.23a Discovery.

The Department and any party named in the notice issued pursuant to § 213.11 shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedures shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the Presiding Officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The Presiding Officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the Presiding Officer may, in his discretion, issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

[40 FR 50272, Oct. 29, 1975]

§ 213.24 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

§ 213.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but

rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 213.26 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 213.27 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 213.28 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 213.29 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 213.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearings briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

§ 213.32 Decisions following hearing.

(a) If the Administrator is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b)(1) If a hearing examiner is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Administrator. The Administrator shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Administrator exceptions to the recommended findings and proposed decision and a supporting brief or statement.

(3) The Administrator shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Administrator concludes that a State plan does not comply with Federal requirements, he shall also, in the case of a hearing pursuant to § 201.6(a) of this chapter, specify whether further payments will not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such noncompliance. The Administrator may ask the parties for recommen-

dations or briefs or may hold conferences of the parties on this question.

(d) The decision of the Administrator under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and a "final determination" within the meaning of section 1116(a)(3) of the Act and § 201.7 of this chapter. The Administrator's decision shall be promptly served on all parties, and amici, if any.

[36 FR 1454, Jan. 29, 1971, as amended at 36 FR 21520, Nov. 10, 1971]

§ 213.33 Effective date of Administrator's decision.

If, in the case of a hearing pursuant to § 201.6(a) of this chapter, the Administrator concludes that a State plan does not comply with Federal requirements, his decision that further payments will not be made to the State, or payments will be limited to categories under or parts of the State plan not affected, shall specify the effective date for the withholding of Federal funds. The effective date shall not be earlier than the date of the Administrator's decision and shall not be later than the first day of the next calendar quarter. The provisions of this section may not be waived pursuant to § 213.4.

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Subpart A—Purpose and Scope and Definitions

Sec.
224.0 Purpose and scope.
224.1 Definitions.

Subpart B—Administration

224.10 General administration provisions.
224.11 Annual State WIN plans.
224.12 [Reserved]
224.13 State and local agreements for WIN activities and programs.
224.14 Allocation of Federal funds.
224.15 Use of Federal funds; political activities.
224.16 Non-Federal contribution.
224.17 Reports, records, financial statements and audits.
224.18 Adjustments in payments to WIN sponsors.
224.19 Termination of contracts or grants.

Subpart C—Requirements and Procedures for Registration, Appraisal and Certification

224.20 Registration requirements for AFDC applicants and recipients; State plan requirements.
224.21 Registration procedures.
224.22 Appraisal and certification.

Subpart D—Supportive and Manpower Services and Protective Provisions

224.30 Supportive services; State plan requirements.
224.31 [Reserved]
224.32 Pay and allowances for WIN registrants.
224.33 Relocation assistance.
224.34 Appropriate work and training criteria.
224.35 Period of participation.
224.36 Nondiscrimination.

Subpart E—The WIN Components and Activities

224.40 Public service employment (PSE).
224.41 Intensive manpower services component.
224.42 On-the-job training (OJT).
224.43 Institutional and other work experience training.
224.44 WIN individuals suspended to other employment or training programs.
224.45 Non-Federal employee status.

Subpart F—Deregistration and Sanctions.

224.50 Deregistration.
224.51 Sanctions.

Subpart G—The WIN Adjudication System

224.60 Disputes regarding WIN registrations.
224.61 Rules and procedures.
224.62 Complaints and grievances.
224.63 Requirement of conciliation and notice.
224.64 Request for hearing.
224.65 Issues subject to a hearing.
224.66 Hearing procedures.
224.67 Conduct of WIN hearings.
224.68 Decisions of the hearing officer.
224.69 Appeals from hearing officer's decision.
224.70 National review panel (NRP).
224.71 Appeals to the NRP.
224.72 Request from NRP to accept certification.
224.73 Requests by NRP for certification.
224.74 Certification of the record.

Sec.
224.75 Consideration by and decisions of the NRP.
224.76 [Reserved]
224.77 Subsequent WIN registration by deregistered individuals.

AUTHORITY: Sec. 402(a)(7), 402(a)(19), 430-444, 1102 of the Social Security Act, as amended, 49 Stat. 647 (42 U.S.C. 602(a)(7)(630-44, 1302) unless otherwise noted.

SOURCE: 41 FR 47688, Oct. 29, 1976, unless otherwise noted.

Subpart A—Purpose and Scope and Definitions

§ 224.0 Purpose and scope.

(a) The purpose of this Part 224 is to provide for a Work Incentive Program (WIN) under Title IV of the Social Security Act (Act).

(b) This part contains the policies, rules, and regulations pertaining to the WIN program. :

§ 224.1 Definitions.

Act means the Social Security Act.

AFDC (Aid to Families with Dependent Children) means the program authorized by Title IV-A of the Act to provide financial assistance and social services to needy families with dependent children.

AFDC Applicant means a person who applies to the State or local welfare agency for AFDC.

Appraisal means the interview of a WIN registrant by WIN sponsor staff and Separate Administrative Unit (SAU) staff to determine employability potential, to determine the need for supportive services, and to develop an employability plan.

Certification means a written notice from the SAU that necessary supportive services have been arranged or are available to enable a WIN registrant to accept employment, training, manpower services, or other employment related activities, or that no supportive services are needed and that the individual is at that time ready for employment or training.

Complaints (See grievances).

Component means a structured regularly scheduled program activity for certified registrants such as OJT, WIN, PSE, institutional training, and work experience, but not employment-related activities or supportive services.

Deregistration means the removal of an individual from the WIN program.

DHHS means the U.S. Department of Health and Human Services.

DOL means the U.S. Department of Labor.

Employability Plan means a written plan for a WIN registrant that sets forth that individual's occupational goal and the manpower and supportive services necessary for him to reach that goal.

Employment-related Activities means activities providing employment and training services to WIN registrants to assist them in locating and securing unsubsidized employment. Employment-related activities include employment search.

Employment search is the part of employment-related activities where registrants are provided with job seeking skills, job development assistance and referrals, and actively contact employers in their effort to secure jobs.

Exempt refers to an AFDC applicant or recipient who is not required by the Act to register for employment, training, or other employment-related activities under the WIN program as a condition of eligibility for AFDC.

Grievance means an adjudicable issue initiated by a WIN registrant which does not involve the threat of sanction. Grievances may include, but are not limited to disputes over assignments where the registrant is not refusing the assignment, alleged discrimination, and complaints about eligibility for, or amounts of, WIN allowances.

Hearing Officer means the hearing officer designated in the State WIN plan to hear and decide or make recommendations on issues involving WIN.

Income Maintenance Unit (IMU) means the unit of the State or local welfare agency which determines individuals' eligibility for AFDC.

Institutional training means vocational or other classroom training conducted by an instructor in a nonworksite setting.

Local WIN Plan means the plan developed annually by local WIN spon-

sor and SAU staffs which describes the operation of the WIN program for a specific local area.

Mandatory or nonexempt registrant means an AFDC applicant or recipient who is required by the Act to register for manpower services training, employment, or other employment-related activities as a condition of eligibility for AFDC.

Manpower services means employment related and training services provided by the WIN sponsor, designed to improve the work skills of an individual and aid him to find employment.

NCC means the National Coordination Committee, a committee established to administer the WIN program, consisting of the Assistant Secretary for Employment and Training (DOL) and the Administrator of the Social and Rehabilitation Service (DHHS).

NRP means the National Review Panel, the final level of administrative review which is comprised of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act's requirements and designated by the Chief Judge to serve as members of that panel.

OJT means on-the-job training, an employment opportunity component in which a certified registrant is hired by a private or public employer and is provided training under contract with the employer.

PSE means public service employment, a WIN sponsored component which provides subsidized employment with public or nonprofit private agencies for individuals who cannot be placed in regular unsubsidized employment.

Recipient means an individual who has been determined to be eligible to receive AFDC.

RA means the Regional Administrator, Employment and Training Administration (DOL).

RC means the Regional Commissioner of the Social and Rehabilitation Service (DHHS).

RCC means the Regional Coordination Committee established in each region consisting of the ARDM and the RC.

Registrant means an AFDC applicant or recipient who has registered with the WIN sponsor for manpower services, training, employment, and other employment-related activities.

Registration means the process whereby an AFDC applicant or recipient completes all necessary registration requirements.

"SAU" means the Separate Administrative Unit, that unit of the State welfare agency established pursuant to section 402(a)(19)(G) of the Act, to administer the WIN program for that agency.

State welfare agency means the welfare agency designated pursuant to 45 CFR 205.100 with authority to administer or supervise the administration of the State plan approved under title IV-A of the Act.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

State plan means the State plan for AFDC approved under title IV, A of the Act.

State WIN Plan means the Statewide operational plan for WIN, covering AFDC applicants and recipients who register for employment, other employment-related activities, manpower services and training under WIN, developed by the WIN sponsor and SAU in each state and approved and supervised by the RCC under title IV, of the Act.

Supportive services means those social services provided or arranged by the SAU, necessary to enable an individual to engage in employment, other employment-related activities, or training.

Training related expenses means those expenses, reimbursable from WIN funds, that are incurred by individuals participating in WIN program components and activities.

Volunteer means an AFDC applicant or recipient who, though exempt from WIN registration, volunteers for WIN and registers for employment, other employment-related activities, manpower services and training.

Welfare hearing officer means the hearing officer designated by the welfare agency to hear and decide or make recommendations on issues re-

lating to exemption or nonexemption for WIN registration.

WIN incentive payment means a cash payment of up to $30 per month, paid to an individual who is participating in an institutional or work experience component.

WIN sponsor means the State agency (such as the State employment service) or other public or nonprofit private agency which, through agreement with the RA, administers the WIN manpower program under Part C of title IV of the Act at the State or local level.

Work experience training means a clearly defined, well-supervised assignment with a public or nonprofit private employer.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48652, Oct. 2, 1981]

Subpart B—Administration

§ 224.10 General administration provisions.

(a) The WIN program is administered jointly by the Secretary of Labor and the Secretary of Health and Human Services. To carry out Department of Labor responsibilities under these regulations, the Secretary of Labor has designated the Assistant Secretary Employment and Training (Assistant Secretary). To carry out Department of Health and Human Services responsibilities under these regulations, the Secretary of Health and Human Services has designated the Administrator of the Social and Rehabilitation Service (Administrator).

(b) The Assistant Secretary and the Administrator together form the WIN National Coordination Committee (NCC) which is responsible for the effective national administration of WIN.

(c) The NCC shall issue a WIN Handbook, establish uniform reporting procedures, establish and clarify policy under these regulations, and establish other requirements for effective administration. NCC issuances shall be binding on all regional, State, and local WIN operations.

(d) The NCC shall designate a national Executive Director to administer the program.

(e) The Assistant Secretary has designated the Assistant Regional Director, Employment and Training Administration in each region (RA) to carry out the WIN program in each region. The Administrator has designated the Regional Commissioner (RC) of the Social and Rehabilitation Service to carry out his responsibilities under these regulations in each region.

(f) Within each region the RA and the RC shall form the WIN Regional Coordination Committee (RCC). The RCC shall review and approve all State WIN plans and modifications of such plans covering the States in its region. Consistent with directives of the NCC, it shall also establish and clarify policy under these regulations and shall establish other requirements for effective administration.

(g) The RCC shall enter into an agreement with the State WIN sponsor and the State welfare agency under which they shall be responsible for the overall administration of the State WIN plan.

(h) Within each state the welfare agency's Separate Administrative Unit (SAU) shall be responsible for the provision and arrangement of supportive services. The Income Maintenance Unit (IMU) of each State welfare agency is responsible for determining all questions relating to eligibility for AFDC benefits, including whether an individual is required to register for WIN.

§ 224.11 Annual State WIN plans.

(a) State WIN plans on an annual basis shall be jointly developed and approved by the State WIN sponsor and State welfare agency. The NCC shall issue instructions setting guidelines to the State WIN sponsor and State welfare agency for the development of State plans. The plan shall indicate those areas in which the State WIN sponsor and welfare agency, after considering such factors as size of the welfare case load and budgetary constraints, propose to operate WIN projects. Each State WIN plan shall describe the operation to be carried out by the State WIN sponsor and the State welfare agency as well as a summary of the data in the local WIN

plans, as required by paragraph (b) of this section. The State WIN plan shall also provide for the establishment of Labor Market Advisory Councils in accord with section 432(f) of the Act.

(b) Each local WIN sponsor and each local SAU shall jointly develop an annual local WIN plan after consulting with other agencies as appropriate. Such plan shall describe the local project's operation. The NCC will issue instructions setting guidelines for the development of such plans.

(c) Local WIN plans shall be forwarded to the State WIN sponsor and State SAU for consideration in the development of the State WIN plan.

(d)(1) The State WIN sponsor and State welfare agency shall:

(i) Submit the State WIN plan (with local WIN plans attached) to the appropriate RCC for action;

(ii) At the same time, forward copies of the plan to the Governor of his delegated agency (as required by OMB Circular A-95) and to the Governor's State Manpower Services Council established under the Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203), or its equivalent for review and comment;

(iii) Urge the Governor to involve appropriate area-wide clearinghouses in the review; and

(iv) Request the Governor and the Council to send any comments directly to the RCC, (with copies to the State WIN sponsor and the State welfare agency), within 45 days from the date that copies of the State WIN plan were mailed to them.

(2) The RCC shall consider any such comments in reviewing the plan, and shall not take final action on the plan until the Governor's and Council's comments have been received, or until the 45 days referred to in paragraph (d)(1)(iv) of this section have elapsed, whichever is earlier.

§ 224.12 [Reserved]

§ 224.13 State and local agreements for WIN activities and programs.

A WIN sponsor may, through agreements with public or private agencies or organizations, including Indian tribes with respect to Indians on a reservation, carry out such activities and programs as are approved or developed by the Secretary of Labor, including but not limited to public service employment programs, intensive manpower services programs, institutional programs, on-the-job training programs, and work experience programs. Work experience programs and public service employment agreements may be entered into only with public agencies and nonprofit private employers organized for a public purpose.

§ 224.14 Allocations of Federal funds.

(a) The Secretary of Labor shall allocate not less than 50 percent of the sums appropriated under Part C of title IV of the Act to carry out the WIN program among the States in accordance with a formula under which each State receives (from the total available for such allotment) an amount which bears the same ratio to the total amount available as the average number of individuals in each State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a)(19)(A) of the Act, bears to the average number of individuals in all States who, during that month, are so registered.

(b) The Secretary of Labor shall allocate the balance of the sums not allocated under paragraph (a) of this section in such manner as he determines will best serve the objectives of the program.

(c) Of the sums expended on WIN by the Department of Labor not less than 33⅓ percent thereof shall be expended for carrying out the programs of on-the-job training and public service employment which meet criteria specified in the WIN Handbook issued under § 224.10.

(d) The Secretary of Health and Human Services shall prescribe methods for the allocation of funds pursuant to section 403(d) of the Act for the 50 States and the District of Columbia. For Puerto Rico, Guam and the Virgin Islands, the Secretary of Health and Human Services shall allocate funds pursuant to section 1108 of the Act.

§ 224.15 Use of Federal funds; political activities.

(a) Federal funds under Part C of title IV of the Act, allocated by the Secretary of Labor to the State WIN sponsor, may be used to meet not more than 90 percent of the cost of carrying out the regulations promulgated under this part.

(b) WIN funds under Part C of title IV of the Act may be used for training, supervision, materials, administration, incentive payments, transportation fees for medical examinations required for the determination of exempt status under § 224.20 or incapacity for work assignment under § 224.34(a)(2) and other items as authorized by the Secretary of Labor, but may not, except in cases of WIN/PSE under the Act, be used for any reimbursement to the employer for time spent by individuals in work.

(c) WIN funds under section 403(d) of the Act may be used to meet 90 percent of the cost of supportive services, including child care, provided by or arranged for by the SAU, for AFDC recipients who are certified to WIN, and SAU administrative costs for all registrants.

(d) Federal funds shall be expended only for costs:

(1) Permitted under the provisions of Subpart 1-15.7 of Title 41 of the Code of Federal Regulations, entitled "Principles for Determining Costs Applicable to Grants and Contracts"; and

(2) Not barred under the provisions of this part.

(e) Pursuant to section 403(c) of the Act, notwithstanding any other provision of this chapter, the Federal share of assistance payments under Title IV-A of the Act for any fiscal year shall be reduced by 1 percentage point for each percentage point by which the number of individuals certified to the WIN sponsor as ready for employment or training under the WIN program falls below 15 percent of the average number of individuals in the State who are required to be registered during such fiscal year.

(f) No funds allocated under the Act shall be used for any partisan or nonpartisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to the Act with:

(1) Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, or lobbying for any matter at public issue;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election;

(3) Any voter registration activity.

§ 224.16 Non-Federal contribution.

(a) A State plan under title IV-A of the Act must provide that the State welfare agency will assure a non-Federal contribution to the Work Incentive programs established under Part C of the Act by appropriate agencies of the State or private organizations of 10 percent of the total cost of such programs, in cash or in-kind fairly evaluated. For this purpose, the State welfare agency will plan jointly with the State WIN sponsor for the development and use of in-kind resources. The State welfare agency must make the arrangements for, but need not itself make, the contribution. An in-kind contribution may be made in the form of the provision of services, staff, space, equipment, or any other goods or services of value essential to the operation of the WIN program. Where such contribution is in-kind, the amount thereof will be determined on the basis of its reasonable value as established by suitable documentation.

(b) The State welfare agency shall assure a non-Federal cash or in-kind contribution of 10 percent of the cost of supportive services and related administrative expenses incurred by the SAU under Title IV-A of the Act.

(c) The WIN sponsor costs of operation of the WIN program which may be met by the non-Federal contribution may include the costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the WIN sponsor.

(d) Funds from other Federal sources, whether in cash or in-kind, may not be used for the non-Federal share, except when specifically permitted by law. State funds or resources that have been used to match other Federal funds also may not be used for this purpose.

(e) If the State welfare agency fails to make arrangements for the non-Federal contribution of 10 percent of the total Statewide program costs of operation, pursuant to paragraph (a) of this section, the Secretary of Health and Human Services may withhold, under the conditions specified in the law, the equivalent of amounts to be paid from the grants to the State agency for the public assistance titles.

(f) The provisions of Federal Management Circular (FMC) 74-7 must be met.

[41 FR 47688, Oct 29, 1979, as amended at 46 FR 48652, Oct. 2, 1981]

§ 224.17 Reports, records, financial statements and audits.

(a) State and local WIN sponsors and welfare agencies shall submit periodic reports as required by DOL and DHHS to assure proper accounting for all program funds, including the non-Federal share. Such records and accounts shall be made available for audit purposes to DOL and DHHS, the Comptroller General of the United States or any authorized representative of these agencies, and shall be retained for 3 years from the date of submission of the final expenditure report or from the date of submission of the annual expenditure report for payments under a grant or contract, whichever is earlier. The records shall be retained beyond the 3-year period if audit findings have not been resolved. State and local WIN sponsors and welfare agencies shall also submit periodic reports as required by DOL and DHHS covering non-financial program activities.

(b) Program funds and activities shall be audited in conformity with the Standards for Audit of Government Organizations, Programs Activities and Functions issued by the Comptroller General of the United States.

[41 FR 47688, Oct. 29, 1979, as amended at 46 FR 48613, Oct 1, 1981]

§ 224.18 Adjustments in payments to WIN sponsors.

(a) If any funds are expended by a WIN sponsor or by a public service employer in violation of the Act, the regulations, grant conditions or contract provisions, the Secretary of Labor may make necessary adjustments in payments to the sponsor or the employing agency on account of such unauthorized expenditures. He may draw back unexpended funds which have been made available in order to assure that they will be used in accordance with the purposes of the Act, or to prevent further unauthorized expenditures, and he may withhold funds otherwise payable under the Act in order to recover any amounts expended for unauthorized purposes in the current or immediately preceding fiscal year.

(b) No action taken by the Secretary of Labor under paragraph (a) of this section shall entitle the WIN sponsor to reduce program activities or allowances for any registrant or to expend less during the effective period of the contract or grant than those sums called for in the State WIN plan. Any such reduction in expenditures may be deemed sufficient cause for termination.

§ 224.19 Termination of contracts or grants.

(a) If a WIN sponsor or IMU violates any provision of the Act or the regulations in this part, or contract provisions or grant conditions which the Secretary of Labor has issued or shall subsequently issue during the period of the contract or grant, the Secretary of Labor may terminate the contract or grant in whole or in part unless the agency which caused the violation corrects it within a period of 30 days after receipt of notice specifying the violation; or

(b) In his discretion, the Secretary of Labor may terminate the contract or grant in whole or in part;

(c) Termination shall be effected by a notice of termination which shall specify the extent of termination and the date upon which such termination

becomes effective. Upon receipt of a notice of termination the agency shall:

(1) Discontinue further commitments of contract or grant funds to the extent that they relate to the terminated portion of the contracts or grants;

(2) Promptly cancel all contracts or subcontracts utilizing funds under the contract or grant to the extent that they relate to the terminated portion of the contract or grant;

(3) Settle, with the approval of the Secretary of Labor, all outstanding claims arising from such termination;

(4) Submit, within 6 months after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the contract or grant but in the case of terminations under paragraph (a) of this section will not include the cost of preparing a settlement proposal. Allowable cost shall be determined in accordance with the provisions of Part 1-15.7 of Title 41 of the Code of Federal Regulations and Federal Management Circular (FMC) 74-4.

Subpart C—Requirements and Procedures for Registration, Appraisal and Certification

§ 224.20 Registration requirements for AFDC applicants and recipients; State plan requirements.

A State plan under Title IV-A of the Social Security Act must provide that:

(a) All applicants and recipients who are required to register by section 402(a)(19)(A) of the Act, shall register for manpower services, training, employment, and other employment-related activities as a condition of eligibility for AFDC, except as otherwise provided under paragraph (b) of this section;

(b) The Income Maintenance Unit (IMU) of the State or local welfare agency shall determine which AFDC applicants and recipients are exempt from registration and which are required to register as a condition of eligibility for AFDC benefits, based on the following criteria: Each AFDC applicant and recipient shall register unless he is:

(1) Under age 16;

(2) A full-time student (as defined in State welfare regulations), aged 16 but under age 18 who is attending an elementary or secondary school, or a vocational or technical school that is equivalent to a secondary school; or a full-time student under age 19, if the State AFDC plan extends coverage to children under age 19, who is attending a secondary school or a program in a vocational or technical school that is equivalent to a secondary school and is reasonably expected to complete such school or program before reaching age 19;

(3) Ill, when determined by the IMU on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(4) Incapacitated, when verified by the IMU that a physical or mental impairment, determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment or training under WIN;

(5) 65 years of age or older;

(6) Residing outside of a WIN project area specified in the State WIN plan or residing within a WIN project area at a location which is so remote from a WIN office or service unit that effective participation in the program is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day, unless normal round trip commuting time in the area is more than 2 hours, in which case the round trip commuting time shall not exceed the generally accepted community standards;

(7) A person in the home, and the IMU has verified that a physical or mental impairment, as determined by a physician or licensed or certified psychologist, of another member of the household requires the individual's presence in the home on a substantially continuous basis, and that no other appropriate member of the household is available;

(8) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child;

(9) A parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative in the home, or phyusical or mental incapacity of a parent, if another adult relative in the home is registered and has not failed or refused to participate in the program or to accept employment without good cause;

(10) A person who is working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days;

(11) The parent of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner as defined in 45 CFR 233.100(a)) is not exempt under one of the other preceding clauses of this section.

(c) The IMU shall inform each applicant and recipient in writing that:

(1) The needs of any nonexempt applicant or recipient who fails to register as required will not be taken into account in determining the need and the amount of the AFDC assistance payment;

(2) Exempt applicants and recipients must report to the IMU any changes which affect their exempt status;

(3) Any applicant or recipient has a right to a hearing before the State welfare agency to contest a determination of nonexempt status or to contest a denial of AFDC benefits when such benefits have been denied because of his refusal to register for WIN;

(4) Exempt applicants and recipients in WIN project areas may choose to register voluntarily for manpower services, training, employment, and employment-related activities, and may withdraw such registration at any time without loss of AFDC benefits, provided their status has not changed in a way which would require registration; and

(5) Nonexempt applicants and recipients, along with exempt individuals who volunteer for WIN, shall report to a specified place of registration at the office of the WIN sponsor or its approved agent.

(d) The IMU shall immediately refer all applicants and recipients, whom it has determined to be nonexempt, and all volunteers, to the WIN sponsor or its approved agent for registration.

(e) The IMU shall refer individuals who have been determined to be exempt from registration on the basis of incapacity to the appropriate State vocational rehabilitation agency.

(f) The IMU of the welfare agency shall include a redetermination of exemption as a part of the AFDC eligibility redetermination process, except where an individual has been determined to be 65 years of age or older, or permanently incapacitated.

(g) The IMU shall notify the WIN sponsor within 3 working days of any welfare determination which may affect an individual's WIN status.

[41 FR 47688, Oct. 29, 1979, as amended at 46 FR 46806, Sept. 22. 1981; 46 FR 48652, Oct. 2, 1981]

§ 224.21 Registration procedures.

(a) The WIN sponsor shall promptly register all individuals found by the IMU to be nonexempt, and all individuals who volunteer for WIN, when they appear at the WIN office so that eligibility determinations are not delayed. Where special conditions warrant (such as a paucity of WIN sponsor offices in an area), the WIN sponsor may, with the concurrence of the RCC, contract with other public or private nonprofit agencies in specified areas to carry out registration activities. Under this requirement, the WIN sponsor (or its approved agency) shall:

(1) Obtain a complete work history on each applicant and recipient;

(2) Notify each registrant about the nature of the WIN program and about his rights and responsibilities therein;

(3) Provide each registrant with written proof of registration;

(4) If the IMU has determined an individual to be nonexempt and the

WIN sponsor disagrees, register the individual and request the IMU to reconsider its determination. The IMU's response will be accepted by the WIN sponsor. If the IMU reverses its decision, the WIN sponsor shall deregister the individual as exempt unless the individual volunteers for WIN. If the IMU does not respond within 30 days of the request, the WIN sponsor shall deregister the individual as exempt;

(5) Notify the IMU of any employment or other change of status which may affect an individual's AFDC eligibility or the amount of the AFDC payment. Included in this notification will be the hours and expected duration of employment.

(6) Notify the IMU, within 3 working days of the registration, that registration has been completed so that the IMU's completion of the welfare eligibility determination shall not be delayed; and

(7) Provide all registrants, at the time of registration, job market information and referral to available employment. All appropriate job market information available to the WIN Sponsor, including Job Bank, shall be used to provide this information and facilitate such referrals.

(b) The needs of any individual who fails to register as required under paragraph (a) of this section shall not be taken into account in determining the need of the family and the amount of assistance, and assistance will be furnished to the eligible members of the family;

(c) Where the WIN sponsor is the State public employment service, the registration required of unemployed fathers under section 407(b)(2)(c)(i) of the Act may be completed at the WIN office. This will fulfill the WIN registration requirement under section 402(a)(19)(A) of the Act.

[41 FR 47688, Oct. 29, 1979, as amended at 46 FR 48652, Oct. 2, 1981]

§ 224.22 Appraisal and certification.

(a) The appraisal interview shall be conducted jointly to the extent possible, or sequentially as appropriate, by the WIN sponsor and the SAU. Whenever possible, appraisal shall occur at the time of registration. An employability plan shall be initiated by the WIN sponsor and the SAU at the appraisal interview for each registrant who is found suitable for participation in the WIN program. The decision to refer an individual to employment or to a work or training component rests with the WIN sponsor.

(b) All unemployed parents who are principal earners as defined in 45 CFR 233.100(a) shall be appraised within 2 weeks of the determination of eligibility for AFDC benefits, and appraisal shall occur prior to certification. Certification shall be completed no later than 30 days from the receipt of AFDC benefits.

(c) Other individuals will be appraised according to the following priorities, taking into account the individual's employment potential:

(1) Mothers, whether or not required to register, who volunteer;

(2) Other mothers, and pregnant women under 19 years of age, who are required to register;

(3) Dependent children and relatives who have attained age 16 and who are not in school full-time or engaged in work or manpower training; and

(4) Others.

(d) The employability plan shall contain a manpower services plan and a supportive services plan, and shall be designed to lead to employment and ultimately to self-support. It shall contain a definite employment goal, attainable in the shortest time period consistent with the supportive services needs, project resources, and job market opportunities. Final approval of the employability plan rests with the WIN sponsor.

(e) The SAU shall certify in writing that the necessary immediate and ongoing supportive services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in a WIN component. The SAU shall also certify registrants who are recipients who are selected to participate in employment-related activities. When certified, the individual shall be placed in employment if appropriate work that the individual can perform is available. If the individual cannot be immediately placed in employment, he shall be placed in employment-related activities, on-the-job

training, public service employment, institutional training or in any other manpower program or activity.

(f) The SAU may provide or arrange for social services for AFDC applicants to enable them to participate in employment-related activities. Such applicants may be certified, or services may be provided or arranged on an occasional basis without certification.

(g) Registrants who find employment or are placed by the WIN sponsor may be certified and necessary supportive services may be provided.

(h) AFDC grants and social services for individuals under the State AFDC plan shall not be denied by reason of the individual's referral to a job to a WIN program, or solely by reason of an individual's participation therein.

[41 FR 47688, Oct. 29, 1979, as amended at 46 FR 46806, Sept 22, 1981; 46 FR 48652, Oct. 2, 1981]

Subpart D—Supportive and Manpower Services and Protective Provisions

§ 224.30 Supportive services; State plan requirements.

A State plan under Part A of title IV of the Act must provide that:

(a) Within the State agency there will be separate administrative units which will, to the maximum extent possible, perform functions only in connection with the WIN program. To the maximum extent feasible, local SAU staff and WIN employment and training staff should be located together to foster more efficient working arrangements for joint appraisals, the development of employability plans, and the provision of services to registrants.

(b) The SAU shall be responsible for:

(1) Developing, jointly with the State WIN sponsor, and approving, a State WIN plan in accordance with section 433(b) of the Act;

(2) Developing and supplying social services necessary to enable a registrant to accept employment, training for employment, or other employment-related activities. Necessary services shall continue for a period of 30 days after the start of unsubsidized employment and may continue for a maximum of 90 days at the discretion of the SAU. Such services may be provided even after the AFDC grant has been discontinued due to employment. In an emergency such services may also be provided for a period of up to 30 days to enable a registrant to continue existing employment;

(3) Participating with the WIN sponsor in appraisal and certification, in the development of employability plans pursuant to § 224.22, and in efforts to resolve grievances and disputes informally.

(4) Certifying in writing to the WIN sponsor that the individual is ready for WIN manpower services when the WIN sponsor requests such certification and the supportive services, if any, have been provided or arranged for; and

(c) Supportive services under the WIN program shall include:

(1) Child care which meets the standards specified in 45 CFR 228.42. When more than one kind of child care is available, the mother or other caretaker relative may choose the type, but may not refuse to accept child care services if they are available. Such services must be responsive to breakdowns in prior arrangements in order to ease or avoid disruption of employment or participation in manpower services;

(2) Family planning services;

(3) Counseling services;

(4) Employment related medical, remedical, and health-related care services not included under the State's Title XIX plan or otherwise available;

(5) Selected vocational rehabilitation services, as defined by the Rehabilitation Act of 1973, which cannot otherwise be funded by the vocational rehabilitation agency;

(d) Other supportive services included in the State WIN plan may be provided if they are necessary to enable registrants to accept employment or receive manpower training.

(e) Supportive services may be provided for up to two weeks to a registrant between participation in WIN components or between participation in a component or employment-related activities and the start of employment in order to avoid interruption of the employability process.

[41 FR 47688, Oct. 29, 1979, as amended at 46 FR 48653, Oct. 2, 1981]

§ 224.31 [Reserved]

§ 224.32 Pay and allowances for WIN registrants.

(a) An individual assigned to employment search shall receive an allowance for necessary expenses for participation.

(b) An individual assigned to a WIN institutional or work experience training component, in which no salary is paid, shall receive an allowance for necessary training related expenses. He shall also receive incentive payments at a rate not to exceed $30 a month provided he meets the requirements of the component relative to hours of participation.

(c) Individuals placed in employment, OJT, or PSE shall be authorized training related expenses for not in excess of two WIN pay periods; or until they receive their first full paycheck or the cash from a grant adjustment reflecting new work related expenses, whichever occurs first.

(d) Reasonable subsistence allowance, in addition to a training-related expense payment, shall be paid to individuals for separate maintenance when in training facilities beyond daily commuting distance from their homes for each calendar day within the training payment period during which they are participating in such training and are residing away from home.

(e) An individual shall be paid transportation allowance to a training facility located beyond commuting distance for the cost of his initial trip to the training facility and for his final trip home at the completion or other termination of such training.

(f) Individuals may be paid allowances for nonrecurring expenses as authorized by the Secretary of Labor.

(g) WIN sponsor offices may establish petty cash funds or another acceptable method to meet needs for cash for allowable expenditures for all registrants.

(h) Registrants referred to employment may receive an allowance for necessary expenses.

[46 FR 48653, Oct. 2, 1981]

§ 224.33 Relocation assistance.

The Secretary of Labor may assist certified individuals to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employed and self-supporting. Such assistance shall be given only to individuals who concur in the relocation and who have received a bona fide job offer at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for such individuals, their dependents, and their household belongings, plus such relocation allowance as the Secretary of Labor determines to be reasonable.

§ 224.34 Appropriate work and training criteria.

(a) WIN registrants may not be referred to employment which is known not to meet the criteria of this paragraph. Certified recipients shall accept assignment to employment, WIN training or employment-related activities, as determined a appropriate by the WIN sponsor or face deregistration action. The following standards must be met before any such individuals can be required to accept a work or training assignment including PSE and OJT:

(1) All assignments for those in WIN training shall be within the scope of an individual's employability plan. This plan may be modified to reflect changed employment conditions;

(2) The job or training assignment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health;

(3) The total daily commuting time to and from home to the work or training site to which the individual is assigned shall not normally exceed 2

80-152 O—82——6

hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance and time is generally accepted in the community, in which case the round trip commuting time shall not exceed the generally accepted community standards;

(4) When child care is required it must meet the standards specified in 45 CFR 228.42 and must be available during the hours the individual is engaged in a WIN component or manpower activity plus any additional necessary commuting time;

(5) The work or training site to which the individual is assigned must not be in violation of applicable federal, State and local health and safety standards;

(6) Assignments shall not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin;

(7) The individual shall not be referred to work or training unless supportive and manpower services necessary for participation are available, even in cases where the State WIN plan does not specifically provide for the needed services. The cessation or withdrawal of such necessary services while the individual is in a WIN component shall constitute good cause for refusal to participate.

(b) The determination of "appropriate work" shall be made at the local project level. The following criteria shall be applied in addition to the above, in determining "appropriate work":

(1) Appropriate work may be temporary, permanent, full-time, part-time or seasonal work if such work meets the other work standards of this section;

(2) When an income disregard is available, the wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market but in no event shall it be less than three-fourths of the minimum wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act;

(3) When, as a result of becoming employed, no income disregard is available to the individual, the wage, less mandatory payroll deductions and a reasonable allowance for necessary employment related expenses, shall provide an income equal to or exceeding the family's AFDC cash benefits. The wage shall in no case be less than that required by any applicable minimum wage law;

(4) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation; and

(5) No individual shall be required to accept employment if—

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute;

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he has membership may be deemed appropriate;

(iii) The job offered would interrupt a program in progress under an approved employability plan leading to self-support or to the resumption of his regular job within a short period of time. This does not, however, preclude temporary employment during the interval prior to his re-employment in his regular job.

(c) In addition to meeting the criteria in paragraph (a) of this section, for training to be appropriate, the quality of the training must meet local employer's requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48653, Oct. 2, 1981]

§ 224.35 Period of participation.

(a) The duration of institutional training established pursuant to section 432(b)(2) of the Act shall average no more than six months with a maximum duration of one year for any individual.

(b) Participation in the work experience component shall not exceed 13 weeks for any individual.

(c) The RCC may, for good cause, allow an exception to the limitations in paragraph (a) of this section.

§ 224.36 Nondiscrimination.

(a) No person in the United States shall, on the grounds of age, race, creed, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under these regulations.

(b) Grievances involving discrimination under paragraph (a) of this section shall be processed according to equal opportunity provisions established by DOL and DHHS and, to the extent applicable, in compliance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the regulations issued thereunder at 29 CFR Part 31 (DOL) and 45 CFR Part 80 (DHHS).

Subpart E—The WIN Components and Activities

§ 224.40 Public service employment (PSE).

(a) PSE consists of WIN subsidized jobs in the public and private nonprofit sectors. All PSE jobs must meet the criteria for appropriate work, established by § 224.34, and must be jobs which would not otherwise be performed by regular employees. The PSE component provides transitional employment intended to move individuals from AFDC into unsubsidized jobs.

(b) All certified registrants for whom appropriate unsubsidized employment cannot be found are eligible for placement in PSE.

(c) An eligible employer may be:

(1) Any unit of State or local government;

(2) Any public agency or institution which is a State or local government subdivision;

(3) An Indian tribe or combination of tribes on a Federal or State reservation; or

(4) Any private nonprofit organization established to serve a public purpose.

(d) For the purpose of AFDC benefits, PSE participants are considered to be employed. However, PSE participants shall not be deregistered from WIN until they complete the scheduled PSE contract period and enter unsubsidized employment. PSE participants are not eligible to receive either a WIN incentive payment or the $30 plus ⅓ disregard provided by section 402(a)(8) of the Act.

(e) Individuals shall not be assigned to a PSE job if this will result in the displacement of already employed full-time workers.

§ 224.41 Employment-related activities (EA).

(a) Each State WIN sponsor shall establish a program of employment-related activities in each WIN site to assist registrants, who are either AFDC applicants or recipients, to obtain employment. The State WIN sponsor shall develop standards of participation taking into account local conditions, including, but not limited to, geographic factors, availability of public transportation, and local labor market characteristics. These standards of participation shall be included in the State WIN plan.

(b) Employment-related activities shall provide employment search. Included may be group job seeking, job development, exposure to labor market information, referrals, and job placement, to assist individuals in obtaining unsubsidized employment.

(c) Participation in required employment search may not exceed a total of 40 work days in any calendar year for any individual.

(d) Assignment of registrants to employment-related activities shall occur only after appraisal and the development of an employability plan. Recipients must be certified prior to participation. AFDC applicants may be certified, but lacking certification must be provided any supportive services necessary to permit effective participation.

[46 FR 48653, Oct. 2, 1981]

§ 224.42 On-the-job-training (OJT).

(a) OJT is an employment opportunity which includes training. Under

this component, a certified registrant is hired by a private or public employer and provided training which is subsidized under contract between the employer and the WIN sponsor. Employers are enccuraged to provide increased supervision and training through contracts with the WIN sponsor, pursuant to which the WIN sponsor will reimburse the employer for the extraordinary costs of such training and supervision.

(b) For the purpose of AFDC benefits, OJT participants are considered to be employed. However, OJT participants shall not be deregistered from WIN until they complete the scheduled OJT contract period as they are still an active participant in the WIN program during such period.

§ 224.43 Institutional and other work experience training.

(a) Institutional training is a component involving vocational or other classroom training conducted by an instructor in a non-worksite setting.

(b) A work experience component is to provide a clearly defined, well-supervised, assignment with a public or private nonprofit employer in which an individual has the opportunity to develop basic work habits, to practice skills learned in classroom training, and to demonstrate skills to a prospective employer.

§ 224.44 WIN individuals suspended to other employment or training programs.

Certified individuals referred to other eligible Federal or State funded employment or training programs, and meeting all the eligibility requirements under those programs, shall be temporarily suspended from the WIN program. Such individuals shall normally be compensated in accordance with and through the provisions of those programs. However, when such compensation is not available or would be disadvantageous to the individual, he may accept regular WIN benefits instead. Notwithstanding such suspension, necessary supportive and manpower services which are not provided under the other program, but which are necessary to permit the individual to continue in the program, will be provided or arranged for by the SAU and the WIN sponsor in accordance with the time limits set forth in this part.

§ 224.45 Non-Federal employee status.

An individual in a WIN component shall not be deemed an employee of the Federal Government, and shall not be subject to the provisions of laws relating to Federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

Subpart F—Deregistration and Sanctions

§ 224.50 Deregistration.

(a) All deregistrations shall be performed by the WIN sponsor.

(b) A deregistration is necessary when an individual is held to have refused to participate without good cause; an incorrect non-exemption determination has been made; or an individual becomes exempt. Deregistration is also necessary when an individual becomes ineligible for AFDC except in the case where he is participating in a component or is employed and receiving WIN-funded supportive services.

(c) The welfare agency shall notify the WIN sponsor of any change which will affect an AFDC recipient's welfare or exemption status in such a way as to warrant deregistration.

(d) Except in those cases where the WIN sponsor has been notified that an AFDC grant has been discontinued for reasons involving other than WIN program issues the WIN sponsor shall notify the IMU of all deregistrations.

(e) Any WIN recipient, except a volunteer, who is determined to have failed or refused without good cause to appear for appraisal; or any certified WIN recipient, except a volunteer, who has failed or refused to participate in the WIN program without good cause shall be deregistered from WIN and removed from the AFDC grant for failure to participate Any individual who without good cause terminates or refuses to accept employment or reduces earnings shall be der-

egistered and removed from the AFDC grant.

(f) Volunteers who withdraw from the WIN program shall be deregistered.

(g) Volunteers who are found to refuse to participate after notice and an adverse hearing decision, if a hearing is requested, shall be deregistered.

(h) The sanction in § 224.51 of this part shall become effective on the first day of the first payment-month that the sanctioned individual's needs are removed from the AFDC grant.

[41 FR 47688, Oct. 29, 1976, as amended at 46 FR 48653, Oct. 2, 1981]

§ 224.51 Sanctions.

A State plan under Title IV-A of the Act shall provide that:

(a) When an AFDC recipient, who is a mandatory registrant in the WIN program, has been found to have failed or refused without good cause to participate in the program or has terminated employment, or has refused to accept employment or reduced earnings without good cause, the following sanctions shall apply:

(1) For the first such occurrence the individual shall be deregistered for three payment-months.

(2) For the second and subsequent occurrences, the individual shall be deregistered for six payment-months.

(b) During the sanction period:

(1) If the individual is a caretaker relative receiving AFDC benefits, the State will not take into account his or her needs in determining the family's need for assistance, but the State will provide assistance in the form of protective or vendor payments or foster care for the remaining members of the assistance unit. When the State makes protective or vendor payments, the non-participating caretaker relative may not be the protective payee.

(2) If the individual is the only dependent child in the family, the State will deny assistance for the family.

(3) If the individual is one of several dependent children in the family, the State will deny assistance for the child and will not take into account the child's needs in determining the family's need for assistance.

(c) When the State finds that an AFDC recipient who is a voluntary registrant has failed or refused to participate in the WIN program without good cause, the State will deregister the individual for three or six payment-months depending on whether this was the first or a subsequent deregistration for failure or refusal to participate. However, the individual's AFDC grant shall not be affected.

(d) An individual may manifest failure or refusal to participate in the WIN program or may manifest termination of employment or may refuse to accept employment or reduction in earnings either by an overt act (express) or by a de facto action.

(1) An overt (express) refusal is a written or oral statement by an individual that he or she will not participate in the WIN program.

(2) A de facto refusal is any current act or pattern of behavior consisting of a series of current events from which failure or refusal to participate can be implied. Where the failure or refusal to participate or termination of employment, or refusal to accept employment, or reduction in earnings is implied, the WIN sponsor shall send a notice setting an appointment for the individual to come to the WIN office and discuss the act or pattern of behavior in question. The notice shall explain the reasons for the appointment and the consequences of failure to keep the appointment.

(e) In the event a registrant is referred back to the IMU as having good cause for not continuing on a training plan or a job, the IMU shall promptly restore the assistance payment to the individual or make other necessary payment adjustments.

[46 FR 48654, Oct. 2, 1981]

Subpart G—The WIN Adjudication System

§ 224.60 Disputes regarding WIN registrations.

(a) The welfare agency shall provide an opportunity for a hearing in the case of a disputed registration determination in which t. AFDC applicant claims that he is exempt from WIN by the statutory criteria. Such an applicant shall be considered as

exempt until his status is finally determined.

(b) A welfare hearing officer shall conduct welfare hearings under this section, pursuant to the procedures prescribed in § 205.10 of this chapter. Where the local WIN sponsor becomes involved in the determination of a disputed registration, a representative of the local WIN sponsor shall appear as a party at the hearing.

§ 224.61 Rules and procedures.

(a) The State WIN plan shall include rules and procedures applicable to both certified and uncertified registrants, governing participation, attendance, conduct, disputes, notice and opportunity for a fair hearing and any State appellate review.

(b) The plan shall specify that the hearing officer shall be an individual who was not involved in the original determination. The plan shall also designate the parties to the hearing.

§ 224.62 Complaints and grievances.

(a) Initially, written complaints and grievances shall be handled informally outside of the WIN adjudication system. They shall be processed at the local project level within the time frame provided under § 224.61(a). At that time, an individual who is not satisfied with the disposition of his complaint may initiate a formal protest at the local project level which then will be processed through the formal WIN adjudication system.

(b) Written records of all disputes arising within the WIN program shall be maintained by the WIN sponsor. The date appearing on such records shall be controlling in determining the timeliness of subsequent steps in the WIN adjudication system.

§ 224.63 Requirement of conciliation and notice.

(a) The WIN staff must exhaust efforts toward conciliatory resolution of disputes between the WIN staff and the registrant before the WIN staff issues a "Notice of Intended Deregistration." This conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate as determined under § 224.51(d) of this part, and may continue for a period not to exceed 30 days. However, either the WIN staff, or the registrant upon written request, *may* terminate this period sooner when either believes that the dispute cannot be resolved by conciliation. The WIN staff shall advise the registrant of the right to terminate the conciliation effort and, where necessary, assist in preparing the written statement.

(b) Within two working days after the WIN staff or the registrant terminates the conciliation period without resolution of the matter, the WIN staff shall mail to the registrant by registered mail a "Notice of Intended Deregistration." This notice must include:

(1) A detailed explanation of the reason for the action and the consequence of refusal or failure to cooperate in a WIN prescribed program without good cause;

(2) Notification of the registrant's right to a hearing if the registrant believes that the proposed action is incorrect, or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 224.64 of this part.

(3) Notice that the proposed action will be implemented if a hearing request is not received within the prescribed time;

(4) Instructions and required forms for requesting a hearing;

(5) An offer to assist with preparation of the hearing request;

(6) Notice that he may be represented at the hearing by counsel or other authorized representative appointed by him and that he and his representative will have the opportunity to confront and cross-examine opposing witnesses;

(7) Notice that he will be permitted to present material evidence and testimony at the hearing that is not already in the record.

(c) When written notification is mailed to the individual, the WIN sponsor shall also inform him of the intended action personally or by telephone, if possible.

(d) The requirements of this section do not apply to an individual who:

(1) Has successfully entered employment and is regularly employed;

(2) Is deregistered as exempt; or

(3) Is deregistered as a result of becoming ineligible for welfare.

[41 FR 47683, Oct. 29, 1976, as amended at 45 FR 27422, Apr. 22, 1980; 46 FR 48654, Oct. 2, 1981]

§ 224.64 Request for hearing.

(a) An individual who believes the intended action is incorrect may request a hearing before a hearing officer within 10 days after mailing of Notice of Intended Deregistration. The request for a hearing may be made either orally or in writing by the individual or his authorized representative to the WIN sponsor. Where the request is oral, the WIN sponsor shall prepare the required forms on behalf of the individual and obtain the individual's signature on the forms.

(b) Hearing procedures shall be made available to individuals requesting hearings in advance of such hearings.

§ 224.65 Issues subject to a hearing.

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by uncertified and certified registrants. The issues for which a hearing may be requested include, but are not limited to, a registrant's failure or refusal to appear for appraisal or for assignment to a WIN component; unresolved WIN grievances; a registrant's failure or refusal without good cause to accept employment or otherwise participate in the WIN program; and the WIN staff determination of the length of the sanction period.

(b) After reasonable attempts have been made at the local level to resolve disputes arising from work, or training assignment under WIN, the designated activity may be accepted without prejudicing the individual's right to protest such assignment. Such protest shall be handled through the WIN adjudication system in the same manner as if the registrant had, in fact, refused to participate in the WIN program. In such an instance, a registrant who fails to accept an adverse decision pursuant to § 224.68(a)(5) shall have no further recourse to a hearing on the issue before a hearing officer but may appeal the decision pursuant to § 224.69.

[41 FR 47688, Oct. 29, 1976, as amended at 45 FR 27423, Apr. 22, 1980]

§ 224.66 Hearing procedures.

(a) Upon receipt of a written request for a hearing, a Notice of Scheduled Hearing shall be mailed to the individual and other parties within 10 days. Such notice shall indicate the date, time, and place of the hearing, the issues to be considered, and the hearing procedures that will be followed. Hearings shall be scheduled no earlier than 10 days, or later than 30 days, following the mailing of the hearing notice.

(b) The hearing officer may reschedule a hearing upon request of the individual, his representative, or other party.

(c) An individual or his representative may withdraw the request for a hearing in writing before the hearing.

(d) The WIN staff or its legal representative shall have primary responsibility for presenting the case before the hearing officer.

§ 224.67 Conduct of WIN hearings.

(a) The hearing officer shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas authorized by State law;

(3) Assure that all relevant issues are considered, including the timeliness of the hearing request;

(4) Rule on the introduction of new and relevant evidence and testimony;

(5) Take any other action consistent with due process, necessary to insure an orderly hearing.

(b) The testimony at the hearing shall be recorded. It shall be transcribed only when necessary for review by an appellate body.

(c) The registrant or his representative, and the designated WIN sponsor and SAU shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(d) The hearing officer may elicit testimony from witnesses, but shall not act as advocate for any party.

(e) The hearing officer shall receive, and make part of the record documen-

tary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available to other interested parties upon request.

(f) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(g) The hearing officer shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 224.68 Decisions of the hearing officer.

(a) The hearing officer may rule:

(1) That the individual has failed to appear for appraisal without good cause or has failed or refused to participate without good cause, and that appropriate deregistration shall be initiated;

(2) That good cause has been shown for failure or refusal to participate and the individual should be retained in the program;

(3) That the request for a hearing is dismissed because:

(i) It was filed untimely without good cause;

(ii) It has been withdrawn in writing;

(iii) The individual failed to appear at the hearing without good cause; or

(iv) Reasonable cause exists to believe that the request has been abandoned or that repeated requests for rescheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing, in which case the welfare agency may initiate necessary action to impose appropriate sanctions;

(4) That the individual was appropriately or inappropriately assigned; or

(5) That the length of the period during which the registrant failed or refused to participate was not correctly determined by the WIN staff.

(6) Whether following conclusion of the sanction period, the WIN staff correctly refused to reregister the individual for cause.

(b) The hearing officer may render such other decisions as are appropriate to the issue or issues before him or her for resolution. However, a hearing officer must not consider the validity or constitutionality of either the Act or the regulations in this Part.

(c) Based on the entire record including any evidence and oral testimony provided at the hearing the hearing officer shall prepare a written decision. Within 10 working days following the hearing, a copy of such decision stating his findings and conclusions of law and the reasons therefore, shall be mailed to the individual and his authorized representative, if any, the WIN sponsor, the SAU, and the RCC. Instructions for appealing an adverse decision or recommendation to the appropriate appellate body shall be attached to the copy sent to the individual and his representative.

(d) In cases involving novel questions of law or policy the hearing officer may, within 5 days after issuing his written decision, certify the case for review and decision to the State WIN appellate body or to the National Review Panel (NRP) where the State does not provide for a State WIN appellate procedure.

[41 FR 47688, Oct. 29, 1976, as amended at 45 FR 27423, Apr. 22, 1980]

§ 224.69 Appeals from hearing officer's decision.

(a) Any party who disagrees with the hearing officer's decision on the WIN issue may request a review of such decision by the appropriate State appellate body within 10 days following the date on which the hearing officer's decision is mailed. A request for appellate review of the hearing officer's decision shall not stay implementation of the decision.

(b) A State WIN appellate body shall consider and decide appeals filed within the time period prescribed by paragraph (a) of this section. Within 30 days after receipt of the request for review it shall prepare a written decision either affirming or reversing the hearing officer's decision or it may remand the case to a hearing officer for further evidence. The decision shall be based on its review of the entire hearing record and any additional written evidence submitted or obtained in connection with its consid-

eration of the appeal. However, in no case shall new evidence be admitted if it brings into question the validity or constitutionality of the regulations in this Part or of the Act. The decision shall state the findings of fact and conclusions of law and the reasons therefore. Copies of the decision shall be mailed to the individual, his authorized representative, if any, the WIN sponsor, the SAU, the RCC, and the NRP. Instructions for appealing a decision to the NRP and the rules under which the NRP considers appeals shall be attached to the individual's copy of the decision.

(c) While reviewing a case, a State WIN appellate body may consider novel questions of law or policy or certify the case within 5 days after rendering its decision to the NRP for review and decision.

(d) If a hearing officer's adverse decision is reversed on appellate review, the individual shall be paid such retroactive WIN and welfare benefits as may be applicable and, where appropriate, shall be reinstated in the program.

§ 224.70 National Review Panel (NRP).

(a) The NRP shall be composed of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act requirements and designated by the Chief Administrative Law Judge to serve as members of the panel. The panel shall be located in Washington, D.C., and shall, unless equity requires otherwise, hold its reviews in Washington.

(b) The NRP has jurisdiction to—

(1) Consider appeals where a State does not provide for a WIN appellate procedure in all cases in which a compelling reason exists, including, but not limited to, cases raising novel and or substantial issues of law or policy.

(2) Consider and decide cases wherein, in the exercise of its discretion, it has accepted certification of the cases to it by the State WIN appellate body, or in the absence of a State WIN appellate body, by the hearing officer because they involve novel questions of law or policy.

(3) Consider and decide cases which, on its own motion, it has requested from a State WIN appellate body or, in the absence of a State WIN appellate body, from the hearing officer.

(4) At its discretion, consider and decide appeals filed by individuals, the WIN sponsor or welfare agencies from State WIN appellate body decisions.

(5) Monitor the consistency, legal sufficiency, and quality of cases handled by the hearing officer and State WIN appellate body.

(6) However, the NRP shall not have jurisdiction to examine the issue of either the validity or constitutionality of the regulations, in this Part or of the Act.

§ 224.71 Appeals to the NRP.

(a) Appeals to the NRP may be filed by any party. Such appeals shall be mailed within 10 days of the date of the written decision from which the appeal is taken.

(b) The appeal shall be in writing, shall identify reasons in support of the appeal, and be addressed to the NRP. Notice of the appeal and, where possible, copies of the appeal shall be sent by the NRP to all parties.

(c) Any party to the proceeding may respond to the appeal or comment in support of or in opposition to the appeal. The submitting party shall mail its response to the NRP within 10 days after the date of mailing of the notification that an appeal has been filed.

§ 224.72 Request for NRP to accept certifications.

(a) The State WIN appellate body, or, in the absence of a State WIN appellate body, the hearing officer may file a request that the NRP accept certification of a case.

(b) The request must contain the following:

(1) A concise statement of the novel question of law or policy which is the basis for the request to accept certification;

(2) A brief summary of the relevant facts and evidence;

(3) Pertinent rulings, conclusions, and decisions by the hearing officer or the WIN appellate body, as the case may be; and

(4) All reasons and arguments in support of the request, including citation of applicable laws and case decisions. A copy of any written decisions by the hearing officer or WIN appellate body must be attached to the request.

(c) A request for the NRP to accept certification shall be filed as follows:

(1) By the State WIN appellate body within 5 days following issuance of its written decision;

(2) In the absence of a State WIN appellate body, by the hearing officer within 5 days after issuance of his written decision;

(d) The party filing a request to the NRP to except certification of a case shall file the request with the NRP U.S. Department of Labor, Washington, D.C. 20036, and simultaneously mail copies to every other party including the State agency administering hearings.

(e) Any party who wishes to respond to the request or to comment thereon may file a response with the NRP in support of or in opposition to the request within 10 days following the date of mailing of a request that the NRP accept certification. A copy of the response shall be mailed to all parties to the proceeding, including the State agency administering hearings.

§ 224.73 Requests by NRP for certification.

(a) Requests by NRP for certification of a case to it shall be made in writing no later than 30 days after receipt by the NRP of a written decision by the State WIN appellate body or the hearing officer. Copies of the request shall be mailed to all parties.

(b) In all cases, any party may file briefs in support of its position. The NRP may request briefs from the parties.

(c) Briefs shall be filed within 30 days from the date mailing of the request that a case be certified. In cases where the NRP requests briefs, a different time limit may be set.

§ 224.74 Certification of the record.

Upon receipt of written notice from the NRP that an appeal has been filed, that it has accepted certification of a case, or that it has requested certification of a case, the State WIN appellate body or the hearing officer, whichever is applicable, within 30 days of mailing of the notification, shall certify and file with the NRP the record of the hearing including the transcript of the hearing; a copy of the hearing officer's decision; where appropriate, a copy of the decision of the State appellate body; and, any other papers and documents relevant to the proceedings. The State WIN appellate body or hearing officer, whichever is appropriate, shall prepare and include an index of the documents transmitted and shall mail a copy of such index to every party.

§ 224.75 Consideration by and decisions of the NRP.

(a) In considering appeals before it, the NRP may sit in panels of three members. The DOL Chief Administrative Law Judge may designate any Administrative Law Judge employed by DOL to review or hear a particular case and to submit his findings and recommendation to the NRP or any duly designated panel thereof.

(b) In considering appeals before it, the NRP, a duly designated panel thereof, or the designated Administrative Law Judge may request the parties to submit additional written statements of position, hear oral argument or hold additional hearings where necessary.

(c)(1) Any party may make application in writing for a hearing or oral presentation. Such application shall set forth the reasons in support thereof and be made within 10 days after:

(i) Mailing of notification of the filing of an appeal from the decision of a hearing officer where the State does not provide for an appellate body; or

(ii) Mailing of notification that the NRP at its discretion has accepted an appeal from the decision of a State WIN appellate body; or

(iii) Mailing of notification that the NRP has accepted certification of a case whether at its request or upon the application of a State WIN appellate body or hearing officer.

(2) If a hearing or oral argument is directed, the notice shall state the

date, time, place, nature, and purpose of the hearing or oral argument. Such notice shall be mailed to all parties.

(3) At any hearing or oral argument so ordered, the NRP, or the designated Administrative Law Judge, may require or direct any party or person to appear to testify or produce evidence if such hearing or argument is deemed necessary, it shall be held at the location of the original hearing.

(4) Any party to the proceeding may appear personally or be represented by an attorney or agent.

(5) If a hearing is directed before an Administrative Law Judge, the findings and recommendations of the Administrative Law Judge to the panel shall be mailed to all parties. Any party may file with the NRP written exceptions and briefs in support thereof within 10 days of the mailing of the Administrative Law Judge's findings and recommendations and shall at the same time mail copies of such exceptions and briefs to all other parties. Any exceptions filed shall refer to specific findings and recommendations of the Administrative Law Judge.

(d) In all cases which are accepted for adjudication by the National Review Panel, the NRP shall send a copy of all relevant materials to the NCC, Solicitor of Labor and Office of General Counsel, DHHS, to afford a 30-day period for the submittal of any response deemed appropriate or requests for oral argument.

(e) The NRP shall prepare a written decision setting forth its findings, the reasons for its conclusions, and an appropriate order. The decision shall be based on the record and any additional evidence submitted to or obtained by the NRP. The decision may consist of affirmation, reversal, remand for further development of the evidence or other appropriate action. Copies of the NRP decisions including notification that the NRP has denied a request that it review a decision of a State WIN appellate body and notification that NRP has accepted certification of a case, shall be mailed to all parties and such other persons as may be appropriate.

§ 224.76 [Reserved]

§ 224.77 Subsequent WIN registration of deregistered individuals.

(a) An individual who has been deregistered on the basis of a determination that he or she failed or refused to participate without good cause in the WIN program may again register for WIN by making an application. This can be done provided the sanction period specified in § 224.51(c) of this part has elapsed and the individual has given evidence to the WIN staff of willingness to participate in the program.

(b) An individual who has been reaccepted into the WIN program after such deregistration shall have the same rights as an individual who registers for the first time.

(c) Reacceptance into the WIN program may be denied where the termination action was the result of the individual's disruptive behavior or of criminal or other activities which presented a hazard to the staff or others.

[41 FR 47688, Oct. 29, 1976, as amended at 45 FR 27423, Apr. 22, 1980]

PART 225—TRAINING AND USE OF SUBPROFESSIONALS AND VOLUNTEERS

Sec.
225.1 Definitions.
225.2 State plan requirements.
225.3 Federal financial participation.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 225.1 Definitions.

(a) The classification of subprofessional staff as community service aides refers to persons in a variety of positions in the planning, administration, and delivery of health, social, and rehabilitation services in which the duties of the position are composed of tasks that are an integral part of the agency's service responsibilities to people and that can be performed by persons with less than a college education, by high school graduates, or by persons with little or no formal education.

(b) "Full-time or part-time employment" means that the person is em-

ployed by the agency and his position is incorporated into the regular staffing pattern of the agency. He is paid a regular wage or salary in relation to the value of services rendered and time spent on the job.

(c) The term "Volunteer" describes a person who contributes his personal service to the community through the agency's human services program. He is not a replacement or substitute for paid staff but adds new dimensions to agency services, and symbolizes the community's concern for the agency's clientele.

(d) "Partially paid volunteers" means volunteers who are compensated for expenses incurred in the giving of services. Such payment does not reflect the value of the services rendered, or the amount of time given to the agency.

[34 FR 1319, Jan. 28, 1969]

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV-B of the Act must:

(a) Provide for the training and effective use of subprofessional staff as community service aides through part-time or full-time employment of persons of low income and, where applicable, of recipients and for that purpose will provide for:

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan for financial assistance under titles I, IV-A, X, XIV, or XVI (AABD), of recipients: and will provide that such subprofessional positions are subject to merit system requirements, except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives:

(2) An administrative staffing plan to include the range of service personnel of which subprofessional staff are an integral part;

(3) A career service plan permitting persons to enter employment at the subprofessional level and, according to their abilities, through work experience, pre-service and in-service training and educational leave with pay, progress to positions of increasing responsibility and reward;

(4) An organized training program, supervision, and supportive services for subprofessional staff; and

(5) Annual progressive expansion of the plan to assure utilization of increasing numbers of subprofessional staff as community service aides, until an appropriate number and proportion of subprofessional staff to professional staff are achieved to make maximum use of subprofessionals in program operation.

(b) Provide for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency and for that purpose provide for:

(1) A position in which rests responsibility for the development, organization, and administration of the volunteer program, and for coordination of the program with related functions;

(2) Methods of recruitment and selection which will assure participation of volunteers of all income levels in planning capacities and service provision;

(3) A program for organized training and supervision of such volunteers;

(4) Meeting the costs incident to volunteer service and assuring that no individual shall be deprived of the opportunity to serve because of the expenses involved in such service; and

(5) Annual progressive expansion of the numbers of volunteers utilized, until the volunteer program is adequate for the achievement of the agency's service goals.

[34 FR 1320, Jan. 28, 1969, as amended at 41 FR 12015, Mar. 23, 1976; 42 FR 60566, Nov. 28, 1977; 45 FR 56686, Aug. 25, 1980]

§ 225.3 Federal financial participation.

Under the State plan for financial assistance programs under titles I, IV-A, X, XIV, XVI (AABD) or for child welfare services under title IV-B of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

[45 FR 56686, Aug. 25, 1980]

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Sec.

232.1 Scope.
232.2 Child support program; State plan requirements.
232.10 Furnishing of social security numbers.
232.11 Assignment of rights to support.
232.12 Cooperation in obtaining support.
232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.
232.30 Cost allocation; joint staff and service staff.
232.40 Claiming good cause for refusing to cooperate.
232.41 Determination of good cause for refusal to cooperate.
232.42 Good cause circumstances.
232.43 Proof of good cause claim.
232.44 Participation by the State IV-D agency.
232.45 Notice to the IV-D agency.
232.46 Granting or continuation of assistance.
232.47 Periodic review of good cause determination.
232.48 Record keeping in good cause.
232.49 Enforcement without the caretaker's cooperation.

APPENDIX A—MODEL TWO-PART GOOD-CAUSE NOTICE

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: 40 FR 27154, June 26, 1975 unless otherwise noted.

§ 232.1 Scope.

This part implements provisions of Part B of Pub. L. 93-647 that are applicable only to title IV-A and establishes other administrative and fiscal requirements.

[41 FR 37781, Sept. 8, 1976]

§ 232.2 Child support program; State plan requirements.

The State plan must specify that the State:

(a) Has in effect a plan approved under part D of title IV of the Act; and

(b) Operates a child support program in conformity with such plan.

§ 232.10 Furnishing of social security numbers.

The State plan must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) For new applicants, the requirements of paragraph (a) of this section shall be effective August 1, 1975; and, for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by § 206.10(a)(9) of this chapter.

(c) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers. For purposes of AFDC foster care, the application for the SSN will be made by the State or local agency.

(d) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(e) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(f) "Applicant" and "recipient" include the caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.

(g) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 402(a)(25) of the Social Security Act and that the SSN will be utilized in the administration of the AFDC program.

[40 FR 27154, June 26, 1975, as amended at 40 FR 52376, Nov. 10, 1975]

§ 232.11 Assignment of rights to support.

(a) The State plan must provide that:

(1) As a condition of eligibility for assistance, each applicant for or recipient of AFDC shall assign to the State any rights to support from any other person as such applicant or recipient may have:

(i) In his own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance; and

(ii) Which have accrued at the time such assignment is executed.

(2) If the relative with whom a child is living fails to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, such relative shall be denied eligibility without regard to other eligibility factors.

(3) If the relative with whom a child is living is found to be ineligible for assistance because of failure to comply with the requirements of paragraph (a)(1), (2), or (3) of this section, any aid for which such child is eligible (determined without regard to the needs of the ineligible relative) will be provided in the form of protective payments as described in § 234.60 of this chapter.

(4) For new applicants, the requirements of paragraph (a) of this section shall be effective August 1, 1975; and for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by § 206.10(a)(9) of this chapter and in any event not later than February 1, 1976.

(b) An assignment by operation of State law which is substantially identical to the requirements of paragraph (a)(1) may be utilized in lieu of the assignment described in that paragraph.

(c) If there is a failure to execute an assignment pursuant to this section, the State may attempt to establish paternity and collect child support pursuant to appropriate State statutes and regulations.

[40 FR 27154, June 26, 1975, as amended at 40 FR 52376, Nov. 10, 1975]

§ 232.12 Cooperation in obtaining support.

The State plan must meet all requirements of this section.

(a) The plan shall provide that as a condition of eligibility for assistance, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with §§ 232.40 through 232.49 of this chapter) with the State in:

(1) Identifying and locating the parent of a child for whom aid is claimed;

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed;

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed; and

(4) Obtaining any other payments or property due the applicant or recipient or the child.

(b) The plan shall specify that *cooperate* includes any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in paragraph (a) of this section.

(1) Appearing at an office of the State or local agency or the child support agency as necessary to provide

verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the applicant or recipient;

(2) Appearing as a witness at judicial or other hearings or proceedings;

(3) Providing information, or attesting to the lack of information, under penalty of perjury; and

(4) Paying to the child support agency any child support payments received from the absent parent after an assignment under § 232.11 has been made.

(c) The plan shall provide that, if the child support agency notifies the State or local agency of evidence of failure to cooperate, the State or local agency will act upon that information to enforce the eligibility requirements of this section.

(d) The plan shall provide that, if the caretaker relative fails to cooperate as required by paragraphs (a) and (b) of this section, the State or local agency will:

(1) Deny assistance to the caretaker relative without regard to other eligibility factors; and

(2) Provide assistance to the eligible child in the form of protective payments as described in § 234.60 of this chapter. Such assistance will be determined without regard to the needs of the caretaker relative.

[43 FR 2176, Jan. 16, 1978, as amended at 43 FR 45747, Oct. 3, 1978; 43 FR 45747, Oct. 3, 1978]

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

(a) The State plan must provide that in any case in which child support payments are collected for a recipient of AFDC with respect to whom an assignment under § 232.11 is effective:

(1) Upon notification to the IV-A agency by the IV-D agency of the amount of a child support collection, such amount will be used to redetermine eligibility for an assistance payment the first time it is feasible for the IV-A agency to consider such collections in redetermining eligibility for and the amount of the assistance payment. This use of these amounts so collected shall not be later than the second month after the month in which the collections were made by the IV-D agency. In determining whether a child support collection made by the State's IV-D agency, which represents support amounts for a month as determined pursuant to § 302.51(a) of this title, is sufficient to make the family ineligible for an assistance payment for the month to which the redetermination applies, the State will determine if such collection, when treated as if it were income, makes the family ineligible for an assistance payment. If such treatment makes the family ineligible, the child support for the month will be considered to be income and the IV-A agency will notify the family and will inform the IV-D agency to pay such collection to the family in the month for which the family was determined to be ineligible. If such treatment does not make the family ineligible for an assistance payment, such collection will not be considered to be income and will be retained by the State's IV-D agency for distribution pursuant to § 302.51 of Chapter III of this title and the assistance payment will be calculated without regard to such collection.

(2) Any payment received pursuant to § 302.51(b)(1) shall not be considered as income or as a resource.

(3) Any payment received pursuant to § 302.51(b) (3) or (5) shall be treated as income in the month following the month to which the redetermination in paragraph (a)(1) applies.

(b) From any amounts of assistance payments which are reimbursed by child support collections made by the IV-D agency, the IV-A agency shall pay the Federal government its share of the collections made, after the incentive payments, if any, have been made pursuant to § 302.52 of Chapter III of this title.

§ 232.30 Cost allocation; joint staff and service staff.

(a) Cost of staff who perform both service and income maintenance functions must be allocated as a basis for claiming Federal financial participation (FFP) under the appropriate titles of the Act and at the rates pre-

scribed under such titles. For purposes of this section, income maintenance functions means all activities related to maintenance, i.e., determination of initial and continuing eligibility for financial and medical assistance, and for food stamps (provided that all members of the household are included in the assistance unit) and the authorization for purchase of coupons if prepared by the worker who determines eligibility for food stamps; furnishing of checks, warrants or food stamps for which the family is eligible under the State plan; maintaining the case in payment or certification status; and performing other related activities required in the administration of the income maintenance program.

(b) Cost of staff of Special Administrative Units (SAUs) providing social and supportive services under the Work Incentive (WIN) program is subject to FFP under title IV-A in all jurisdictions, pursuant to section 403(d) of the Act and 45 CFR 224.14(d). Cost of staff who solely perform other social service functions is not eligible for FFP under title IV-A, except in Puerto Rico, the Virgin Islands, and Guam.

[41 FR 37781, Sept. 8, 1976]

§ 232.40 Claiming good cause for refusing to cooperate.

(a) *Opportunity to claim good cause.* The plan shall provide that an applicant for, or recipient of, AFDC will have the opportunity to claim good cause for refusing to cooperate as required by § 232.12.

(b) *Notice to applicant or recipient.* (1) The plan shall provide that: (i) Prior to requiring cooperation under § 232.12, the State or local agency will notify the applicant or recipient of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination;

(ii) The notice will be in writing, with a copy furnished to the applicant or recipient; and

(iii) The applicant or recipient and the caseworker will acknowledge that the applicant or recipient received the notice by signing and dating a copy of the notice, which will be placed in the case record.

(2) The notice may be in two parts. If the State elects a two part notice:

(i) The first notice shall: (A) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity and securing support;

(B) Advise the applicant or recipient that by law, cooperation in establishing paternity and securing support is a condition of eligibility for AFDC;

(C) Advise the applicant or recipient of the sanction provided by § 232.12 for refusal to cooperate without good cause;

(D) Advise the applicant or recipient that good cause for refusal to cooperate may be claimed; and that if the State or local agency determines, in accordance with this section, that there is good cause, the applicant or recipient will be excused from the cooperation requirement; and

(E) Advise the applicant or recipient that upon request, or following a claim of good cause, the agency will provide further notice with additional details concerning good cause.

(ii) The second notice, which will be provided promptly upon request of the applicant or recipient or following a claim of good cause, shall:

(A) Indicate that the applicant or recipient must provide corroborative evidence of a good cause circumstance (as specified in § 232.43 (b) and (f)) and must, when requested, furnish sufficient information to permit the State or local agency to investigate the circumstances;

(B) Inform the applicant or recipient that upon request, the State or local agency will provide reasonable assistance in obtaining the corroborative evidence;

(C) Inform the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation if necessary, the State or local agency will determine whether cooperation would be against the best interests of the child for whom support would be sought;

(D) List the circumstances (as specified in § 232.42) under which cooperation may be determined to be against the best interests of the child;

(E) Inform the applicant or recipient that the State Child Support Enforce-

ment agency may review the State or local agency's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause; and

(F) As applicable, (see § 232.49) inform the applicant or recipient that either: The State Child Support Enforcement agency will not attempt to establish paternity and collect support in those cases where the applicant or recipient is determined to have good cause for refusing to cooperate; or the State Child Support Enforcement agency may attempt to establish paternity and collect support in those cases where the State or local agency determines that this can be done without risk to the applicant or recipient if done with out their participation.

(3) The State or local agency may, at its option, provide a single combined notice that contains all of the elements in paragraphs (b) (2) (i) and (ii) of this section.

(4) Appendix A to this Part 232 is a suggested two part notice format that meets the requirements of this section.

(c) *Requirements upon applicant or recipient.* (1) The plan shall provide that an applicant for, or recipient of, AFDC who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. Such applicant or recipient will be required to:

(i) Specify the circumstances (see § 232.42) that the applicant or recipient believes provide sufficient good cause for not cooperating.

(ii) Corroborate the good cause circumstances in accordance with § 232.43; and

(iii) If requested, provide sufficient information (such as the putative father or absent parent's name and address, if known) to permit an investigation pursuant to § 232.43(g).

(2) The plan shall provide that if the requirements of paragraph (c)(1) of this section are not met, the State or local agency shall on that basis determine that good cause does not exist.

[43 FR 45747, Oct. 3, 1978]

§ 232.41 Determination of good cause for refusal to cooperate.

The plan shall provide that:

(a) For each applicant for or recipient of AFDC who claims to have good cause, the State or local agency will determine, in accordance with §§ 232.40, 232.42 and 232.43, whether good cause exists.

(b) The State or local agency's final determination that good cause does, or does not exist will:

(1) Be in writing;

(2) Contain the agency's findings and basis for determination; and

(3) Be entered into the AFDC case record.

(c) The State or local agency's determination of whether or not good cause exists will be made within a State established time standard that does not exceed 45 days from the day the good cause claim is made. The State or local agency may exceed this time standard only where the case record documents that the agency needs additional time because the information required to verify the claim cannot be obtained within the time standard or that the claimant did not provide corroborative evidence within the period required by § 232.43(b).

(d) If the State or local agency determines that good cause does not exist:

(1) The applicant or recipient will be so notified and afforded an opportunity to cooperate, withdraw the application for assistance, or have the case closed; and

(2) Continued refusal to cooperate will result in imposition of the sanction provided by § 232.12.

[43 FR 45748, Oct. 3, 1978]

§ 232.42 Good cause circumstances.

(a) *Circumstances under which cooperation may be "against the best interests of the child."* The plan shall provide that the State or local agency will determine that cooperation in establishing paternity and securing support is against the best interests of the child only if:

(1) The applicant's or recipient's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

(i) Physical harm to the child for whom support is to be sought;

80-152 O—82——7

(ii) Emotional harm to the child for whom support is to be sought;

(iii) Physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately;

(iv) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately; or

(2) At least one of the following circumstances exists, and the State or local agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

(i) The child for whom support is sought was conceived as a result of incest or forcible rape;

(ii) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(iii) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish him for adoption, and the discussions have not gone on for more than 3 months.

(b) *Physical Harm and Emotional Harm defined.* Physical harm and emotional harm must be of a serious nature in order to justify a finding of good cause under paragraph (a)(1) of this section. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

(c) *Special considerations related to emotional harm.* The plan shall provide that, for every good cause determination which is based in whole or part upon the anticipation of emotional harm to the child, the parent or the caretaker relative, as provided for in paragraphs (a)(1) (ii) and (iv) of this section, the State or local agency will consider the following:

(1) The present emotional state of the individual subject to emotional harm;

(2) The emotional health history of the individual subject to emotional harm;

(3) Intensity and probable duration of the emotional impairment;

(4) The degree of cooperation to be required; and

(5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

[43 FR 45478, Oct. 3, 1978]

§ 232.43 Proof of good-cause claim.

The plan shall provide that:

(a) The State or local agency will make a good-cause determination based on the corroborative evidence supplied by the applicant or recipient only after it has examined the evidence and found that it actually verifies the good-cause claim.

(b) The applicant or recipient who claims good cause must provide corroborative evidence within 20 days from the day the claim was made. In exceptional cases where the State or local agency determines the applicant or recipient requires additional time because of the difficulty of obtaining the corroborative evidence, the agency shall allow a reasonable additional period of time upon approval by supervisory personnel.

(c) A good-cause claim may be corroborated with the following types of evidence:

(1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape;

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;

(3) Court, medical, criminal, child protective services, social sevices, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative;

(4) Medical records which indicate emotional health history and present emotional health status of the caretaker relative or the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional

health of the caretaker relative or the child for whom support would be sought;

(5) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish him for adoption; and

(6) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances which provide the basis for the good-cause claim.

(d) If after examining the corroborative evidence submitted by the applicant or recipient, the State or local agency wishes to request additional corroborative evidence which is needed to permit a good-cause determination, the agency will:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed; and

(2) Specify the type of document which is needed.

(e) Upon request, the State or local agency will:

(1) Advise the applicant or recipient how to obtain the necessary documents; and

(2) Make a reasonable effort to obtain any specific documents which the applicant or recipient is not reasonably able to obtain without assistance.

(f) Where a claim is based on the applicant's or recipient's anticipation of physical harm as specified and defined in § 232.42 (a) and (b), and corroborative evidence is not submitted in support of the claim:

(1) The State or local agency will investigate the good-cause claim when the agency believes that:

(i) The claim is credible without corroborative evidence; and

(ii) Corroborative evidence is not available.

(2) Good cause will be found if the claimant's statement and the investigation which is conducted satisfies the agency that the applicant or recipient has good cause for refusing to cooperate.

(3) A determination that good cause exists will be reviewed and approved or disapproved by supervisory personnel and the agency's findings will be recorded in the case record.

(g) The State or local agency may further verify the good-cause claim if the applicant's or recipient's statement of the claim required by § 232.40(c)(1)(i), together with the corroborative evidence do not provide sufficient basis for making a determination. When the State or local agency determines that it is necessary, the agency may conduct an investigation of good-cause claims to determine that good cause does or does not exist.

(h) If it conducts an investigation of a good-cause claim, the State or local agency will:

(1) Contact the absent parent or putative father from whom support would be sought if such contact is determined to be necessary to establish the good-cause claim; and

(2) Prior to making such necessary contact, notify the applicant or recipient to enable the applicant or recipient to:

(i) Present additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary;

(ii) Withdraw the application for assistancse or have the case closed; or

(iii) have the good cause claim denied.

[43 FR 45749, Oct. 3, 1978]

§ 232.44 Participation by the State IV-D Agency.

The plan shall provide that:

(a) Prior to making a final determination of good cause for refusing to cooperate, the State or local agency will:

(1) Afford the IV-D agency the opportunity to review and comment on the findings and basis for the proposed determination; and

(2) Consider any recommendation from the IV-D agency.

(b) The State or local agency will give the IV-D agency the opportunity to participate in any hearing (under § 205.10 of this chapter) that results from an applicant's or recipient's appeal of any agency action under §§ 232.40 through 232.49.

[43 FR 45749, Oct. 3, 1978]

§ 232.45 Notice to the IV-D Agency.

The plan shall provide that:

(a) If the notice, required by § 235.70 of this chapter, has previously been provided to the IV-D agency, the State or local agency will promptly report to the IV-D agency that good cause has been claimed;

(b) The State or local agency will promptly report to the IV-D agency all cases in which it has determined that there is good cause for refusal to cooperate and if applicable, its determination whether or not child support enforcement may proceed without the participation of the caretaker relative; and

(c) The State and local agency will promptly report to the IV-D agency all cases in which it has determined that there is not good cause for refusal to cooperate.

[43 FR 45749, Oct. 3, 1978]

§ 232.46 Granting or continuation of assistance.

The plan shall provide that the State or local agency will not deny, delay, or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements of §§ 232.40(c) and 232.43 to furnish corroborative evidence and information.

[43 FR 45750, Oct. 3, 1978]

§ 232.47 Periodic review of good cause determination.

The plan shall provide that the State or local agency will:

(a) Periodically review, not less frequently than at each redetermination of eligibility required by § 206.10(a)(9) of this chapter, those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change; and

(b) If it determines that circumstances have changed such that good cause no longer exists, it will rescind its findings and proceed to enforce the requirements of § 232.12 of this chapter.

[43 FR 45750, Oct. 3, 1978]

§ 232.48 Record keeping in good cause.

The plan shall provide that the State will maintain records of the activities under this section that will make it possible to submit to the Department, upon request, data concerning:

(a) The total number of cases in which the applicant or recipient claimed to have good cause for refusing to cooperate;

(b) The number of cases in which the claim was made without corroborative evidence under the provisions of § 232.43(f);

(c) The total number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate;

(d) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate without corroborative evidence under the provisions of § 232.43(f);

(e) The number of cases in which the applicant or recipient was fund to have good cause for refusing to cooperate based solely on an examination of the corroborative evidence supplied by the applicant or recipient with no investigation;

(f) The number of cases where good cause was claimed by an applicant prior to receiving AFDC and the final determination that good cause did not exist was made after the applicant was determined to be eligible for AFDC;

(g) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate but there was a determination pursuant to § 232.49 that child support enforcement may proceed without the participation of the caretaker relative; and

(h) For those cases in which good cause was found, which of the circumstances specified in § 232.42 was found to exist.

[43 FR 45750, Oct. 3, 1978]

§ 232.49 Enforcement without the caretaker's cooperation.

The State plan may provide that:

(a) If the State or local agency makes a determination that good cause exists it will also make a determination of whether or not child sup-

port enforcement could proceed without risk of harm to the child or caretaker relative if the enforcement or collection activities did not involve their participation;

(b) This determination will be in writing, contain the agency's findings and basis for determination, and be entered into the AFDC case record;

(c) If the IV-A agency excuses cooperation but determines that the IV-D agency may proceed to establish paternity or enforce support, it will notify the applicant or recipient to enable such individual to withdraw their application for assistance or have the case closed; and

(d) Prior to making a determination under this paragraph, the State or local agency will afford the IV-D agency an opportunity to review and comment on the findings and basis for the proposed determination and consider any recommendation from the IV-D agency.

[43 FR 45750, Oct. 3, 1978]

Appendix A—Model Two-Part Good Cause Notice

This suggested two-part notice format meets the notice requirements of § 232.40(b)(2). The first notice should be provided prior to requiring the applicant's or recipient's cooperation. The second notice should be promptly provided if the applicant or recipient so requests or following a claim of good cause. Receipt of the notice will be acknowledged by the applicant's or recipient's and the worker's signatures. The signed copy should be placed in the AFDC case record with one copy retained by the applicant or recipient.

Before being used by a State this model should be adapted by substituting the appropriate agencies' names.

Notice of Requirement To Cooperate and Right To Claim Good Cause for Refusal To Cooperate in Child Support Enforcement

BENEFITS OF CHILD SUPPORT ENFORCEMENT

Your cooperation in the child support enforcement process may be of value to you and your child because it might result in the following benefits:

- Finding the absent parent;
- Legally establishing your child's paternity;
- The possibility that support payments might be higher than your welfare grant; and
- The possibility that you and your children may obtain rights to future social security, veterans, or other government benefits.

WHAT IS MEANT BY COOPERATION?

The law requires you to cooperate with the welfare and child support agencies to get any support owed to you and any of the children for whom you want AFDC, unless you have good cause for not cooperating.

In cooperating with the welfare or child support agency, you may be asked to do one or more of the following things:

- Name the parent of any child applying for or receiving AFDC, and give information you have to help find the parent;
- Help determine legally who the father is if your child was born out of wedlock;
- Give help to obtain money owed to you or the children receiving AFDC; and
- Pay to the State any money which is given directly to you by the absent parent (you will continue to get your full AFDC grant from the State).

You may be required to come to the welfare office, child support office, or court to sign papers or give necessary information.

WHAT IS MEANT BY GOOD CAUSE?

You may have good cause not to cooperate in the State's efforts to collect child support. You may be excused from cooperating if you believe that cooperation would not be in the best interest of your child, and if you can provide evidence to support this claim.

IF YOU DO NOT COOPERATE AND YOU DO NOT HAVE GOOD CAUSE

- You will be ineligible for AFDC.
- Your children will still be eligible for AFDC for their own needs. Your children's grant will go to another person, called a "protective payee."

HOW AND WHEN YOU MAY CLAIM GOOD CAUSE

- If you want to claim good cause, you must tell a worker that you think you have good cause. You can do this at any time you believe you have good cause not to cooperate.
- If you claim "good cause" you must be given another notice. This second notice will explain the circumstances under which the Welfare Agency may find good cause, and the type of evidence or other information the Welfare Agency needs to decide your claim. You may also ask for this second notice to help you decide whether or not to claim good cause.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

_____

(Signature of applicant/recipient)

_____

(Date)

I have provided the applicant/recipient with a copy of this notice.

_____

(Signature of worker)

_____

(Date)

SECOND NOTICE OF RIGHT TO CLAIM GOOD CAUSE FOR REFUSAL TO COOPERATE IN CHILD SUPPORT ENFORCEMENT

GOOD CAUSE CIRCUMSTANCES

You may claim to have good cause for refusing to cooperate if you believe that such cooperation would not be in the best interests of your child. The following are circumstances under which the Welfare Agency may determine that you have good cause for refusing to cooperate:

•Cooperation is anticipated to result in serious physical or emotional harm to the child;

•Cooperation is anticipated to result in physical or emotional harm to you which is so serious it reduces your ability to care for the child adequately;

•The child was born after forcible rape or incest;

•Court proceedings are going on for adoption of the child; or

•You are working with an agency helping you to decide whether to place the child for adoption.

PROVING GOOD CAUSE

It is your responsibility to:

•Provide the Welfare Agency with the evidence needed to determine whether you have good cause for refusing to cooperate (If your reason for claiming good cause is your fear of physical harm and it is impossible to obtain evidence, the Welfare Agency may still be able to make a good cause determination after an investigation of your claim.)

•Give the necessary evidence to the agency within 20 days after claiming good cause. The Welfare Agency will give you more time only if it determines that more than 20 days are required because of the difficulty in obtaining the evidence.

The Welfare Agency may:

•Decide your claim based on the evidence which you give to the agency, or

•Decide to conduct an investigation to further verify your claim. If the Welfare Agency decides an investigation is needed, you may be required to give information, such as the absent parent's name and address, to help the investigation. The agency will not contact the absent parent without first telling you.

NOTE.—If you are an applicant for assistance, you will not receive your share of the grant until you have given the agency the evidence needed to support your claim, and, if requested, the information needed to permit an investigation of your claim.

EXAMPLES OF ACCEPTABLE EVIDENCE

The following are examples of acceptable kinds of evidence the Welfare Agency can use in determining if good cause exists.

If you need help in getting a copy of any of the documents, ask the Welfare Agency. The Welfare Agency will give you reasonable assistance which is needed to help you obtain the necessary documents to support your claim.

•Birth certificates, or medical or law enforcement records, which indicate that the child was conceived as the result of incest or forcible rape;

•Court documents or other records which indicate that legal proceedings for adoption are pending in court;

•Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the alleged or absent father might inflict physical or emotional harm on you or the child;

•Medical records which indicate emotional health history and present health status of you or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of you or the child;

•A written statement from a public or private agency confirming that you are being assisted in resolving the issue of whether to keep or give up the child for adoption; and

•Sworn statements from individuals, including friends, neighbors, clergymen, social workers, and medical professionals who might have knowledge of the circumstances providing the basis of your good cause claim.

CHILD SUPPORT AGENCY PARTICIPATION AND ENFORCEMENT

The Child Support Enforcement Agency may review the Welfare Agency's findings and the basis for a good cause determination in your case. If you request a hearing regarding this issue of good cause for refusing to cooperate, the Child Support Enforcement Agency may participate in that hearing.

The Notice must include one of the following statements, as applicable depending on the State plan option chosen. See § 232.49.

Option 1

If you are found to have good cause for not cooperating, the Child Support Enforcement Agency may attempt to establish paternity or collect support only if the Welfare Agency determines that this can be done without risk to you or your child. This will not be done without first telling you.

Option 2

If you are found to have good cause for not cooperating, the Child Support Enforcement Agency will not attempt to establish paternity or collect support.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

_____

(Signature of applicant/recipient)

_____

(Date)

I have provided the applicant/recipient with a copy of this notice.

_____

(Signature of worker)

_____

(Date)

[43 FR 45750, Oct.3, 1978]

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Sec.

233.10 General provisions regarding coverage and eligibility.
233.20 Need and amount of assistance.
233.21 Budgeting methods for OA, AB, APTD, and AABD.
233.22 Determining eligibility under prospective budgeting.
233.23 When assistance shall be paid under retrospective budgeting.
233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.
233.25 Retrospective budgeting; computing the assistance payment after the initial one or two months.
233.26 Retrospective budgeting; determining eligibility after the initial one or two months.
233.27 Supplemental payments under retrospective budgeting.
233.28 Monthly reporting.
233.29 How monthly reports are treated and what notices are required.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC).
233.37 How monthly reports are treated and what notices are required (AFDC).
233.39 Age.
233.40 Residence.
233.50 Citizenship and alienage.
233.51 Deeming of sponsor's income and resources to the sponsored alien.
233.52 Overpayment to aliens.
233.60 Institutional status.
233.70 Blindness.
233.80 Disability.
233.90 Factors specific to AFDC.
233.100 Dependent children of unemployed parents.
233.106 Denial of AFDC benefits to strikers.
233.110 AFDC foster care.
233.120 Emergency assistance to needy families with children.
233.145 Expiration of medical assistance programs under titles I, IV-A, X, XIV and XVI of the Social Security Act.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted.

§ 233.10 General provisions regarding coverage and eligibility.

(a) *State plan requirements.* A State plan under title I, IV—A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not

result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act. Under this requirement:

(i) A State shall impose each condition of eligibility required by the Social Security Act; and

(ii) A State may:

(A) Provide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage;

(B) Impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

(iii) There must be clarity as to what groups are included in the plan, and which are within, and which are outside, the scope of Federal financial participation.

(iv) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

(v) A plan under title XVI must have the same eligibility conditions and other requirements for the aged, blind, and disabled, except as otherwise specifically required or permitted by the Act.

(vi) Eligibility conditions or agency procedures or methods must not preclude the opportunity for an individual to apply and obtain a determination of eligibility or ineligibility.

(vii) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

(2) Provide that the State agency will establish methods for identifying the expenditures for assistance for any groups included in the plan for whom Federal financial participation in assistance may not be claimed.

(3) In addition, a State plan under title IV-A, X, XIV, or XVI of the Act, must: Provided that no aid or assistance will be provided under the plan to an individual with respect to a period for which he is receiving aid or assistance under a State plan approved under any other of such titles or under title I of the Act.

(b) *Federal financial participation.* (1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances of the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial participation with respect to the applicable group and payments. State plan provisions on need, the amount of assistance, and eligibility determine the limits of Federal financial participation. Federal financial participation is excluded from assistance payments in which the State refuses to participate because of the failure of a local authority to apply such State plan provisions.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older.

(ii) AFDC—for:

(*a*) Needy children under the plan who are:

(*1*) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

(*2*) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a father; and

(*3*) Living in the home of a parent or of certain relatives specified in the Act, or in foster care under certain conditions.

(*b*) The parent or other caretaker relative of a dependent child and, in certain situations, the parent's spouse.

(iii) AB—for needy individual's under the plan who are blind.

(iv) APTD—for needy individuals under the plan who are 18 years of age or older and permanently and totally disabled.

(v) AABD—for needy individuals under the plan who are aged, blind, or 18 years of age or older and permanently and totally disabled.

(3) Federal financial participation is available in assistance payments made for the entire month in accordance with the State plan if the individual was eligible for a portion of the month, provided that the individual was eligible on the date that the payment was made; except that where it has been determined that the State agency had previously denied assistance to which the individual was entitled, Federal financial participation will be provided in any corrective payment regardless of whether the individual is eligible on the date that the corrective payment is made.

(4) Federal financial participation is available in assistance payments which are continued in accordance with the State plan, for a temporary period during which the effects of an eligibility condition are being overcome, e.g., blindness in AB, disability in APTD, physical or mental incapacity, continued absence of a parent, or unemployment of a father in AFDC.

(5) Where changed circumstances or a hearing decision makes the individual ineligible for any assistance, or eligible for a smaller amount of assistance than was actually paid, Federal financial participation is available in excess payments to such individuals, for not more than one month following the month in which the circumstances changed or the hearing decision was rendered. Federal financial participation is available where assistance is required to be continued unadjusted because a hearing has been requested.

[36 FR 3866, Feb. 27, 1971, as amended at 38 FR 8744, Apr. 6, 1973; 39 FR 26912, July 24, 1974; 40 FR 32958, Aug. 5, 1975; 46 FR 46763, Sept. 21, 1981]

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* (i) Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way except where otherwise specifically authorized by Federal statute and (ii) Provide that individuals receiving SSI benefits under title XVI, for the period for which such benefits are received, shall not be included in the AFDC assistance unit for purposes of determining need and the amount of the assistance payment. Under this requirement, "individuals receiving SSI benefits under title XVI" includes individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Act or under section 212 of Pub. L. 93-66.

(2) *Standards of assistance.* (i) Specify a statewide standard, expressed in money amounts, to be used in determining (*a*) the need of applicants and recipients and (*b*) the amount of the assistance payment.

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with paragraph (a)(3)(viii) of this section. Nevertheless, if a State maintains a system of dollar maximums these maximums must be proportionately adjusted in relation to the updated standards.

(iii) Provide that the standard will be uniformly applied throughout the State.

(iv) Include the method used in determining need and the amount of the assistance payment.

(v) If the State agency includes special need items in its standard, (A) describe those that will be recognized and the circumstances under which they will be included, and (B) provide that they will be considered for all applicants and recipients requiring them. Expenses related to or necessitated by a recipient's participation in a CWEP

project, established under §238.20 of this chapter may not be included as a special need.

(vi) If the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipient.

(vii) [Reserved]

(viii) Provided that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit.

(3) *Income and resources.* OAA, AFDC, AB, APTD, AABD. (i) Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis.

(A) In OAA, AB, APTD, and AABD, in addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased; and

(B) In AFDC—The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only—

(*1*) The home which is the usual residence of the assistance unit;

(*2*) One automobile, up to $1,500 of equity value or such lower limit as the State may specify in the State plan; and

(*3*) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value.

(ii) Provide that in determining need and the amount of the assistance payment, after all policies governing the reserves and allowances and disregard or setting aside of income and resources referred to in this section have been uniformly applied:

(A) In determining need, all remaining income and resources shall be considered in relation to the State's need standard;

(B) In determining financial eligibility and the amount of the assistance payment all remaining income (except unemployment compensation received by an unemployed principal earner) at the State's option, be considered in relation to the State's need standard, or the State's payment standard. Unemployment compensation received by an unemployed principal earner shall be considered only by subtracting it from the amount of the assistance payment after the payment has been determined under the State's payment method;

(C) If agency policies provide for allocation of the individual's income as necessary for the support of his dependents, such allocation shall not exceed the total amount of their need as determined by the State's need standard;

(D) Net income available for current use and currently available resources shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. For AFDC when the assistance unit's income after application of applicable disregards exceeds the State need standard for the family (unless such excess was caused by a regular and periodic extra paycheck from a recurring income source, in which case see §233.24(d)), the family will be ineligible for aid for the number of full months derived by dividing this total income by the need standard applicable to the family starting with the month in which the income is received. Any income remaining after

this calculation is treated as income received in the first month following the period of ineligibility.

(E) Income and resources will be reasonably evaluated. Resources will be evaluated according to their equity value.

For purposes of this paragraph (a)(3): Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods; Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved (If a motor vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle); Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, loan value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients;

(iii) States may prorate income received by individuals employed on a contractual basis over the period of the contract or may prorate intermittent income received quarterly, semiannually, or yearly over the period covered by the income. They may use the prorated amount to determine need under §233.23 and the amount of the assistance payment under §§ 233.24 and 233.25.

(iv) Provide that, in determining the availability of income and resources, the following will not be included as income: (*a*) Income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment); (*b*) loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; and (*c*) home produce of an applicant or recipient, utilized by him and his household for their own consumption.

(v) Provide that agency policies will assure that in determining the eligibility of an individual for an assistance payment or the amount of such payment, child support amounts which are collected as part of the State's child support enforcement program will be treated in accordance with § 232.20. Any child support amounts for which an assignment pursuant to § 232.11 is effective, which are received directly by the assistance unit shall be paid to the State child support enforcement unit. Whether or not the support payments are received regularly, the agency does not delay or reduce public assistance payments on the basis of assumed support which is not actually available.

(vi) Except for child support obligations assigned pursuant to § 232.11 of this chapter, if the State agency holds relatives responsible for the support of applicants and recipients, (*a*) include an income scale for use in determining whether responsible relatives have sufficient income to warrant expectation that they can contribute to the support of applicants or recipients, which income scale exceeds a minimum level of living and at least represents a minimum level of adequacy that takes account of the needs and other obligations of the relatives; and (*b*) provide that no request will be made for contributions from relatives whose net cash income is below the income scale. In family groups living together, income of the spouse is considered available for his spouse and income of a parent is considered available for children under 21, except that, under the AFDC plan, if a spouse or parent is receiving SSI benefits under title XVI, then, for the period for which such benefits are received, his income and resources shall not be counted as income and resources available to the AFDC unit. For purposes of this exception, "a spouse or parent receiving SSI benefits" includes a spouse or parent receiving mandatory or optional State supplementary payments under section 1616(a) of the Act or under section 212 of Pub. L. 93-66.

(vii) If the State agency establishes policy under which assistance from other agencies and organizations will not be deducted in determining the

amount of assistance to be paid, provide that no duplication shall exist between such other assistance and that provided by the public assistance agency. In such complementary program relationships, nonduplication shall be assured by provision that such aid will be considered in relation to: (*a*) The different purpose for which the other agency grants aid such as vocational rehabilitation; (*b*) the provision of goods and services that are not included in the statewide standard of the public assistance agency, e.g., a private agency might provide money for special training for a child or for medical care when the public assistance agency does not carry this responsibility; or housing and urban development payments might be provided to cover moving expenses that are not included in the assistance standard; or (*c*) the fact that public assistance funds are insufficient to meet the total amount of money determined to be needed in accordance with the statewide standard. In such instances, grants by other agencies in an amount sufficient to make it possible for the individual to have the amount of money determined to be needed, in accordance with the public assistance agency standard, will not constitute duplication.

(viii) Provide that: (A) payment will be based on the determination of the amount of assistance needed; (B) if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide; (C) no payment of aid shall be made to an individual in any month in which the amount of aid prior to any adjustments is determined to be less than $10; and (D) an individual who is denied aid solely because of the limitation specified in (C) of this paragraph shall be deemed a recipient of aid for all other purposes except participation in the Community Work Experience Program.

(ix) Provide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability.

(x) Provide that the income and resources of individuals who are receiving SSI benefits under title XVI, for the period for which such benefits are recieved, shall not be counted as income and resources of an assistance unit applying for or receiving assistance under title IV-A. Under this requirement, "individuals receiving SSI benefits under title XVI" includes individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Act or under section 212 of Pub. L. 93-66.

(xi) In the case of AFDC if the State chooses to count the value of the food stamp coupons as income, provide that the State plan shall:

(A) Identify the amount for food included in its assistance and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate the amount based on historical data or some other justifiable procedure.); and

(B) Specify the amount of such food stamp coupons that it will count as income. Under this requirement, the amount of food stamp coupons which a State may count as income may not exceed the amount for food established in its payment standard for an assistance unit of the same size and composition.

(xii) In the case of AFDC if the State chooses to count the value of the governmental rent or housing subsidies as income, provide that the State plan shall:

(A) Identify the amount for shelter included in its assistance and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate this amount based on historical data or some other justifiable procedure.); and

(B) Specify the amount of such housing assistance that it will count as income. Under this requirement, the amount of such rent or housing subsidies which a State may count as income may not exceed the amount for shelter established in its payment standard for assistance unit of the same size and composition.

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income exceeds 150 percent of the

State's need standard for a family of the same composition (other than the assistance payment), without application of the disregards in paragraph (a)(11)(i) and (ii) of this section, except in States that do not have a law of general applicability, the stepparents disregards in paragraph (a)(11)(vi), and the alien sponsors disregards in §233.51 of this chapter must be applied in making this determination.

(4) *Disregard of income in OAA, AFDC, AB, APTD, or AABD.* (i) For all programs except AFDC. If the State chooses to disregard income from all sources before applying other provisions for disregarding or setting aside income, specify the amount that is first to be disregarded, but not more than $7.50 per month, of any income of an individual, child or relative claiming assistance. All income must be included such as social security or other benefits, earnings, contributions from relatives, or other income the individual may have.

(ii) Provide that, in determining eligibility for public assistance and the amount of the assistance payment, the following will be disregarded as income and resources:

(*a*) The value of the coupon allotment under the Food Stamp Act of 1964 in excess of the amount paid for the coupons;

(*b*) The value of the U.S. Department of Agriculture donated foods (surplus commodities);

(*c*) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(*d*) Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education;

(*e*) Any funds distributed per capita to or held in trust for members of any Indian tribe under Pub. L. 92-254, Pub. L. 93-134 or Pub. L. 94-540;

(*f*) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(*g*) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under titles II and III, pursuant to section 418 of Pub. L. 93-113;

(*h*) Payments to volunteers under Title I of Pub. L. 93-113, pursuant to section 404(g) of Pub. L. 93-113;

(*i*) The value of supplemental food assistance received under the Child Nutrition Act of 1966 as amended, and the special food service program for children under the National School Lunch Act, as amended (Pub. L. 92-433 and Pub. L. 93-150);

(*j*) The weekly incentive allowance made under sec. 111 of Pub. L. 93-203, the Comprehensive Employment and Training Act of 1973;

(*k*) Tax-exempt portions of payments made pursuant to Pub. L. 92-203, the Alaska Native Claims Settlement Act;

(*l*) Experimental Housing Allowance Program payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under section 23 of the U.S. Housing Act of 1937, as amended.

(*m*) Effective October 17, 1975, pursuant to section 6 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459e) receipts distributed to members of certain Indian tribes which are referred to in section 5 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459d).

(iii) Provide that income and resources which are disregarded or set aside under this part will not be taken into consideration in determining the need of any other individual for assistance.

(5) [Reserved]

(6) *Disregard of earned income; definition.* Provide that for purposes of disregarding earned income the agency policies will include: (i) A definition of "earned income" in accordance with the provisions of paragraphs (a)(6)(iii) through (viii) of this section; and

(ii) Provision for disregarding earned income for the period during which it is earned, rather than when it is paid, in cases of lump-sum payment for services rendered over a period of more than 1 month.

(iii) The term "earned income" encompasses income in cash or in kind earned by a needy individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. In considering income from farm operation, the option available for reporting under OASDI, namely the "cash receipts and disbursements" method, i.e., a record of actual gross, of expenses, and of net, is an individual determination and is acceptable also for public assistance.

(iv) With reference to commissions, wages, or salary, the term "earned income" means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers.

(v) With respect to self-employment, the term "earned income" means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross income received with the "business expenses," i.e., total cost of the production of the income. Personal expenses, such as income-tax payments, lunches, and transportation to and from work, are not classified as business expenses.

(vi) The definition shall exclude the following from "earned income": Returns from capital investment with respect to which the individual is not himself actively engaged, as in a business (for example, under most circumstances, dividends and interest would be excluded from "earned income"); benefits (not in the nature of wages, salary, or profit) accruing as compensation, or reward for service, or as compensation for lack of employment (for example, pensions and benefits, such as United Mine Workers' benefits or veterans' benefits).

(vii) With regard to the degree of activity, earned income is income produced as a result of the performance of services by a recipient; in other words, income which the individual earns by his own efforts, including managerial responsibilities, would be properly classified as earned income, such as management of capital investment in real estate. Conversely, for example, in the instance of capital investment wherein the individual carries no specific responsibility, such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient, the income would not be classified as earned income.

(viii) Reserves accumulated from earnings are given no different treatment than reserves accumulated from any other sources.

(ix) In the case of an applicant or recipient of AFDC, "earned income" shall include the amount of advance payments of the earned income credit for which he or she is eligible.

(A) If an individual applying for or receiving AFDC has on file with his employer an Earned Income Credit (EIC) Advance Payment Certificate (Form W-5) for the current taxable year and is, in fact, receiving the advance payments, the State agency shall include that amount as earned income of the individual in the month received.

(B)(*1*) If an individual applying for or receiving AFDC has earned income but has not filed with his employer an Earned Income Advance Payment Certificate (Form W-5) or has filed a Form W-5 but has not received any advance payment, the State agency shall include as earned income of the individual the advance payment that would be payable if a certificate had been filed or the amount that will be paid pursuant to the certificate that has been filed. The State agency, in order to count the advance payment not actually received, must determine that the individual will be eligible to claim the earned income credit on his Federal income tax return for that taxable year and can, in fact, receive it as an advance payment.

(2) In order to determine in advance whether an individual will be eligible to receive the earned income credit, the State agency must determine that the individual will meet the requirements specified in the Internal Revenue Code under 26 U.S.C. 43 and 3507, and under the corresponding regulations at 26 CFR 1.43-1, 1.43-2, 31.3507-1 and 31.3507-2 which establish eligibility criteria for receipt of the earned income credit and advance payments of the credit.

(3) In order to determine the amount that would be received if an individual filed an Earned Income Advance Payment Certificate with his employer, the State agency must consult the tables provided by the Secretary of the Treasury.

(4) In determining whether an individual meets the support or maintenance of household test as required by the Internal Revenue Code, the State agency may not include the amount of AFDC received by the individual.

(5) The State agency must reconcile at the end of the tax year any differences between the amount of the EIC assumed and actually received by the recipient. Any underpayment should be paid to current recipients and any overpayment recovered.

(7) *Disregard of earned income; method.* Provide that for other than AFDC, the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of "earned income," and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment.

(ii) In applying the disregard of income under paragraph (a)(11)(i) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit in which he or she is a member is eligible without the application of any AFDC provisions for the disregard in (a)(11)(ii) by applying the unit's earnings (less the disregards in (a)(11)(i) and (a)(11)(iv) and in § 233.51) and all other income to the State's standard of need. This preliminary step does not apply if the assistance unit received assistance in one of the four months prior to the month of application.

(8) *Disregard of earned income applicable only to OAA, APTD, or AABD.* If the State chooses to disregard earned income, specify the amount to be disregarded of the first $80 per month of income that is earned by an aged or disabled individual claiming OAA, APTD, or AABD, who is not blind, but not more than $20 per month plus one-half of the next $60 of such earned income.

(9) *Disregard of income and resources applicable only to APTD or AABD.* If the State chooses to disregard income (which may be additional to the income disregarded under paragraph (a)(8) of this section) or resources for a disabled individual to achieve the fulfillment of a plan of self-support, provide that the amounts of additional income and resources will not exceed those found necessary for the period during which the individual is actually undergoing vocational rehabilitation, and specify the period, not in excess of 36 months, for which such amounts are to be disregarded.

(10) *Disregard of income and resources applicable only to AB or AABD.* Provide that, in determining the need of individuals who are blind, (i) the first $85 per month of earned income of the individual plus one-half of earned income in excess of $85 per month will be disregarded; and (ii) if the individual has a plan for achieving self-support, such additional income and resources as are necessary to fulfill such plan will be disregarded for a period not in excess of 12 months. Such additional income and resources may be disregarded for an additional period not in excess of 24 months (for a total of 36 months), as specified in the State plan.

(11) *Disregard of income applicable only to AFDC.* (i) For purposes of eligibility determination and benefit calculation:

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college,

or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Comprehensive Employment and Training Act of 1973 (CETA).

(B) Disregard from the monthly earned income of each individual other than a student referred to in paragraph (a)(11)(i)(A) of this section whose needs are included in the eligibility determination or who is receiving assistance:

(*1*)(*i*) The first $75 (or a lesser amount in the case of an individual not engaged in full-time employment or not employed throughout the month). The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75. For purposes of treating self-employment income, the State must specify in its plan that those self-employment work expenses directly related to producing the goods or services and without which the goods or services could not be produced shall be excluded. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal of loans for capital assets or durable goods shall not be excluded.

(*ii*) An amount equal to the actual cost, but not to exceed $160 (or a lesser amount in the case of an individual not engaged in full-time employment or not employed throughout the month), for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $160.

(ii) For individuals found otherwise eligible to receive assistance or who have received assistance in one of the 4 months prior to the month of application, where appropriate, the State must also disregard from the individual's earned income $30 plus one-third of his earned income not already disregarded. However, the State may not provide the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to his earned income unless he is not a recipient of aid for 12 consecutive months.

(iii) The applicable earned income disregards in paragraphs (i)(C) and (ii) of this section do not apply to the earned income of the individual for the month in which one of the following conditions apply to him:

(A) An individual terminated his employment or reduced his earned income without good cause (as specified in the State plan) within the period of 30 days preceding such month;

(B) An individual refused without good cause (as specified in the State plan) within the period of 30 days preceding such month to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment;

(C) An individual failed without good cause (as specified in the State plan) to make a timely report of that income as defined in § 233.27; or

(D) The individual voluntarily requests assistance to be terminated for the sole purpose of avoiding receiving the $30 and one-third disregard for four consecutive months.

(iv) The treatment of earned income and expenses under WIN is as follows:

(A) For earned income from regular employment or on-the-job training, pursuant to section 432(b)(1) of the Act the disregards in paragraphs (i)(C) and (ii) of this section shall apply.

(B) For institutional and work experience training, pursuant to section 432(b)(2) of the Act, the $30 monthly incentive payment and the reimbursement for training related expenses made by the manpower agency are totally disregarded; and

(C) For public service employment, pursuant to section 432(b)(3) of the Act, work related expenses (the disregards in subparagraphs (i)(C) (*1*) and

(2)) are deducted, but the $30 plus one-third disregard of subparagraph (ii) does not apply.

(v) In States that do not have laws of general applicability, whenever a stepparent of an AFDC child is living in the same household as the child provide for the disregard of:

(A) The first $75 of the gross earned income of the stepparent if he or she is employed full-time. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75 for stepparents who are not employed on a full-time basis or not employed throughout the month;

(B) An additional amount for the support of the stepparent and any other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determinations and are claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregarded amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and those other individuals described in the preceding sentence;

(C) Amounts actually paid by the stepparent to individuals not living in the home but who are claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability; and

(D) Payments by such stepparent of alimony or child support with respect to individuals not living in the household. All of the stepparent's remaining income shall be assumed available to the assistance unit.

(12) *Recoupment of overpayments and correction of underpayments for programs other than AFDC.* Specify uniform Statewide policies for:

Specify uniform Statewide policies for:

(i) Recoupment of overpayments of assistance, including certain overpayments resulting from assistance paid pending hearing decisions.

(A) The State may not recoup any overpayment previously made to a recipient:

(*1*) Unless the recipient has income or resources exclusive of the current assistance payment currently available in the amount by which the agency proposes to reduce payments: except that,

(*2*) Where such overpayments were occassioned or caused by the recipient's willful withholding of information concerning his income, resources or other circumstances which may affect the amount of payment, the State may recoup prior overpayments from current assistance grants irrespective of current income or resources.

(B) Withholding of information which is subject to the provisions of paragraph (a)(12)(i)(A)(*2*) of this section includes the following:

(*1*) Willful misstatements (either oral or written) made by a recipient in response to oral or written questions from the State agency concerning the recipient's income, resources or other circumstances which may affect the amount of payment. Such misstatements may include understatements of amounts of income or resources and omission of an entire category of income or resources;

(*2*) A willful failure by the recipient to report changes in income, resources or other circumstances which may affect the amount of payment, if the State agency has clearly notified the recipient of an obligation to report such changes. The recipient shall be given such notification periodically at times (not less frequently than semiannually) and by methods which the State agency determines will effectively bring such reporting requirements to the recipient's attention:

(*3*) A willfull failure by the recipient (*i*) to report receipt of a payment which the recipient knew represented an erroneous overpayment, or (*ii*) to notify the State agency of receipt of a check which exceeded the prior check by at least the amount which the State agency had previously notified the recipient (pursuant to the provisions of paragraph (a)(12)(i)(A)(*4*) of this section) might represent an overpayment and constitute a sum to which the recipient would not be entitled. In making a determination pursuant to this paragraph (a)(12)(i)(B)(*3*), all relevant circumstances including the amount by which the erroneous

80-152 O—82——8

payment exceeded the previous payment shall be considered.

(C) Each periodic notification under paragraph (a)(12)(i)(B)(*2*) of this section shall:

(*1*) Include a reminder that it is the recipient's continuing obligation to furnish to the State agency accurate and timely information concerning changes in income, resources, or other circumstances which may affect the amount of payment, within a reasonable specified period after such change. The recipient may also be notified that a failure to so notify the State agency within the designated time period may constitute a willful withholding of such information and permit the State agency to recover any overpayment occasioned or caused by the willful withholding;

(*2*) Specifically and comprehensibly in simple phraseology indicate the type of information to be disclosed by the recipient. Examples shall be furnished of the most frequent types of newly acquired income or resources (e.g., inheritance, wages from a part-time job);

(*3*) Require that, if there is any doubt whether a particular change in circumstances constitutes such reportable information, the recipient contact the State agency or a designated representative thereof within a reasonable specified period of time after such change in circumstances;

(*4*) If the State plan provides for recoupment in the circumstances described in paragraph (a)(12)(i)(B)(*3*)(*ii*) of this section, notify the recipient that if the check received exceeds the prior check by a specified amount (which amount may not be less than that which a reasonable man should have known was erroneous), this increased check may constitute a sum to which the recipient is not entitled. In such instances, the notification may require that the recipient notify the State agency or a designated representative thereof prior to the negotiation of such check, so that corrective action may be taken; the State agency shall respond to such notification within 24 hours. The recipient may also be notified that a failure to so notify the State agency within the designated time period may constitute a willful withholding of such information and permit the State agency to recover such overpayment.

(*d*) The State agency shall require periodic formal acknowledgement by recipients (on a form utilized for this purpose) that the reporting obligations of this paragraph had been brought to the recipient's attention and that they were understood.

(*e*) Any recoupment of overpayments made under circumstances other than those specified in paragraph (a)(12)(i)(B) of this section shall be limited to overpayments made during the 12 months preceding the month in which the overpayment was discovered.

(*f*) Any recoupment of overpayments permitted by paragraph (a)(12)(i)(A)(*2*) of this section may be made from available income and resources (including disregarded, setaside or reserved items) or from current assistance payment or from both. If recoupments are made from current assistance payments, the State shall, on a case-by-case basis, limit the proportion of such payments that may be deducted in each case, so as not to cause undue hardship to recipients.

(*g*) The plan may provide for recoupment in all situations specified herein, or only in certain of the circumstances specified herein, and for waiver of the overpayment where the cost of collection would exceed the amount of the overpayment.

(*h*) Election by the State not to recoup overpayments shall not waive the provisions of §§ 205.40, and 205.41, or any other quality control requirement.

(ii) Prompt correction of underpayments to current recipients, resulting from administrative error where the State plan provides for recoupment of overpayments. Under this requirement:

(*a*) Retroactive corrective payment shall be made only for the 12 months preceding the month in which the underpayment is discovered;

(*b*) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month

paid nor in the next following month; and

(c) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.

(13) *Recovery of overpayments and correction of underpayments for AFDC.* Specify uniform Statewide policies for:

(i) Recovery of overpayments of assistance, including overpayments resulting from assistance paid pending hearing decisions.

(A) The State must take all reasonable steps necessary to promptly correct any overpayment.

(*1*) Any recovery of an overpayment to a current assistance unit must be recovered through repayment by the individual (in part or in full) or recovering the overpayment by reducing the amount of any aid payable to the assistance unit of which he or she is a member.

(*2*) If recovery is made form the grant, such recovery shall result in the assistance unit retaining from the combined aid (family income and liquid resources), (without application of section 402(a)(8) of the Act) not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income.

(B) The State shall recover an overpayment from (*1*) the assistance unit which was overpaid, (*2*) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (*3*) any individual members of the overpaid assistance unit whether or not currently a recipient. If the State recovers from individuals who are no longer recipients, recovery shall be made by appropriate action under State law against the income or resources of those individuals.

(C) If through recoupment, the amount payable to the assistance unit is reduced to zero, members of the assistance unit are still considered recipients of AFDC.

(D) In cases which have both an underpayment and an overpayment, the State will offset one against the other in correcting the payment.

(ii) Prompt correction of any underpayments to current recipients and those who would be a current recipient if the error causing the underpayment had not occurred. Under this requirement, for purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income, or as a resource in the month paid nor in the next following month.

(b) *Federal financial participation; General.* (1) Federal participation will be available in financial assistance payments made on the basis that (after application of policies governing the allowable reserve, disregard or setting aside of income and resources), all income of the needy individual, together with the assistance payment, do not exceed the State's defined standard of assistance, and available resources of the needy individuals do not exceed the limits under the State plan.

(2) Federal participation is available within the maximums specified in the Federal law, when the payments do not exceed the amount determined to be needed under the statewide standard, and are made in accordance with the State method for determining the amount of the payment, as specified in §§233.24 and 233.25.

(3) Federal participation is available in financial assistance payments made on the basis of the need of the individual. This basis may include consideration of needy persons living in the same home with the recipient when such other persons are within the State's policy as essential to his well-being. Persons living in the home who are "essential to the well-being of the recipient," as specified in the State plan, will govern as the basis for Federal participation (see Guides and Recommendations). When the State includes persons living outside the home or persons not in need, Federal participation is not available for that portion of financial assistance payments attributable to such persons, and the State's claims must, therefore, identify the amounts of any such nonmatchable payments.

(c) *Federal financial participation in vendor payments for home repairs.*

With respect to expenditures made after December 31, 1967, expenditures to a maximum of $500 are subject to Federal financial participation at 50 percent for repairing the home owned by an individual who is receiving aid or assistance (other than Medical Assistance for the Aged) under a State plan for OAA, AFDC, AB, APTD, or AABD if:

(1) Prior to making the expenditures the agency determined that: (i) The home is so defective that continued occupancy is unwarranted; (ii) unless repairs are made the recipient would need to move to rental quarters; and (iii) the rental cost of quarters for the recipient (including the spouse living with him in such home and any other individual whose needs were considered in determining the recipient's need) would exceed (over a period of 2 years) the repair costs needed to make such home habitable together with other costs attributable to continued occupancy of such home.

(2) No expenditures for repair of such home were made previously pursuant to a determination as described in paragraph (c)(1) of this section. This does not preclude more than one payment made at the time repairs are made pursuant to the determination, e.g., separate payments to the roofer, the electrician, and the plumber.

(3) Expenditures for home repairs are authorized in writing by a responsible agency person, records show the eligible person in whose behalf the home repair expenditure was made, and there is sufficient evidence that the home repair was performed.

(Sec. 1, 402, 1002, 1102, 1402, and 1602 of the Social Security Act, 42 U.S.C. 301, 602, 1302, 1352, and sec. 6 of Pub. L. 94-114, 49 Stat. 629 as amended, 49 Stat. 647; 89 Stat. 579)

[34 FR 1394, Jan. 29, 1969, as amended at 37 FR 12201; June 20, 1972; 39 FR 22268, June 21, 1974; 40 FR 27156, June 26, 1975; 40 FR 30965, July 24, 1975; 40 FR 57359, Dec. 9, 1975; 41 FR 13357, Mar. 30, 1976; 41 FR 30647, July 26, 1976; 41 FR 35847, Aug. 25, 1976; 41 FR 54489, Dec. 14, 1976; 41 FR 56646, Dec. 29, 1976; 42 FR 6584, Feb. 3, 1977; 42 FR 16145, Mar. 25, 1977; 42 FR 26427, May 24, 1977; 43 FR 45586, Oct. 3, 1978; 43 FR 45586, Oct. 3, 1978; 44 FR 26082, May 4, 1979; 45 FR 45912, July 8, 1980; 46 FR 46763, Sept. 21, 1981; 46 FR 50372, Oct. 13, 1981]

§ 233.21 Budgeting methods for OA, AB, APTD, and AABD.

(a) *Requirements for State plans.* A State plan for OA, AB, APTD, and AABD shall specify if assistance payments shall be computed using a prospective budgeting system or a retrospective budgeting system. A State electing retrospective budgeting shall specify which options it selects and the State plan shall state that it shall meet the requirements in §§ 233.21 through 233.29. Budgeting methods for AFDC are described in §§ 233.31 through 233.37.

(b) *Definitions.* The following definitions apply to §§ 233.21 through 233.29:

(1) "Prospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) "Retrospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on actual income or circumstances which existed in a previous month, the "budget month".

(3) "Budget month" means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) "Payment month" means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month and the payment month shall begin within 32 days after the end of the budget month.

(5) "Make an assistance payment." In the context of retrospective budgeting, to make an assistance payment means that the check shall be deposited in the U.S. mail, hand delivered to the recipient, or deposited with an intermediary organization, such as a bank.

(6) "Supplemental payment." In the context of retrospective budgeting, a supplemental payment is a payment which maintains a family during the time it takes for the monthly assistance payment to reflect a change in circumstances or income.

[44 FR 26082, May 4, 1979, as amended at 46 FR 46766, Sept. 21, 1981]

§ 233.22 Determining eligibility under prospective budgeting.

In States which compute the amount of the assistance payment prospectively, the State plan shall provide that the State shall also determine all factors of eligibility prospectively. Thus, the State agency shall establish eligibility based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

[44 FR 26082, May 4, 1979]

§ 233.23 When assistance shall be paid under retrospective budgeting.

(a) A State which uses retrospective budgeting shall specify in its plan that it will make assistance payments within the following time limits to recipients who file a completed report on time, and to those who are not required to file a report. A State shall choose one of two time periods for making assistance payments. The State plan shall provide that payment must be made—

(1) Within 25 days from the close of the budget month; or

(2) Between 25 and 45 days from the close of the budget month.

(b)(1) Where a State makes payments between 25 and 45 days from the close of the budget month, the State plan shall provide that the State will make supplemental payments as provided in § 233.27.

(2) If a State makes payments within 25 days from the close of the budget month, and also makes supplemental payments as provided in § 233.27, the State plan shall so specify.

(c) In States which issue two checks for each payment month, these time periods apply to the first check.

[44 FR 26083, May 4, 1979]

§ 233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.

(a) States which make assistance payments within 25 days of the close of the budget month shall determine eligibility and compute the amount of the payment for all recipients prospectively for the initial month of assistance. These States may choose to determine eligibility and compute the payment prospectively for the second month, also.

(b) States which make assistance payments between 25 and 45 days from the close of the budget month shall determine eligibility and compute the amount of the payment prospectively for the initial two months of assistance.

(c) When a person who previously received assistance reapplies during the same month in which a termination became effective, eligibility shall be determined according to paragraph (a) or (b) of this section. However, the amount of the assistance payment for the month of the reapplication shall be computed retrospectively.

[44 FR 26083, May 4, 1979]

§ 233.25 Retrospective budgeting; computing the assistance payment after the initial one or two months.

The State plan shall provide:

(a) After the initial one or two payment months of assistance under § 233.24, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on earned and unearned income received in the corresponding budget month.

(b) In these subsequent months, other factors of need which affect the amount of the assistance payment may also be based on circumstances in the corresponding budget month, or they may be based on circumstances in the payment month.

(c) For the first month in which retrospective budgeting is used, a State shall not consider income received by the recipient before the date of application. When a person reapplies during the same month in which a termination became effective, the State

may consider income received before the date of application.

[44 FR 26083, May 4, 1979]

§ 233.26 Retrospective budgeting; determining eligibility after the initial one or two months.

(a) Under retrospective budgeting, there are three options for determining eligibility. The State plan shall specify that eligibility, following the initial one or two months under § 233.24, shall be determined by one of the following methods—

(1) A State may consider all factors, including income retrospectively, i.e., only from the budget month. For example, if a change in circumstances occurs which affects eligibility, e.g., deprivation ceases, the change may be reported at the end of the budget month and assistance shall be terminated for the corresponding payment month. Thus, even if the agency could have terminated assistance earlier than the corresponding payment month, it shall not do so under retrospective determination of eligibility.

(2) A State may consider all factors, including income, prospectively. For example, if deprivation ceases, and the family becomes ineligible, the agency shall immediately take steps to terminate assistance.

(3) A State may use a combination of the options in paragraphs (a) and (b) of this section by considering factors related to earned and unearned income retrospectively and all other factors prospectively. For example, if a change in income makes the family ineligible, the agency shall wait until the corresponding payment month to terminate assistance. On the other hand, if a change of circumstances other than income makes the family ineligible, the agency shall immediately take steps to terminate assistance.

(b) Child support collected by the IV-D agency and reported to the IV-A agency is an exception to the methods outlined in paragraph (a) of this section. When a IV-A agency receives an official report of a child support collection it shall consider that information as provided in § 232.20(a) of this chapter. (§ 233.20(a) explains the treatment of child support collections.)

[44 FR 26083, May 4, 1979; 44 FR 29065, May 18, 1979]

§ 233.27 Supplemental payments under retrospective budgeting.

(a) *General requirements.* A State plan which provides for payments between 25 and 45 days from the close of a budget month, shall provide for supplemental payments to eligible recipients who request them. A State plan which provides for payments within 25 days may provide for supplemental payments.

(1) The supplemental payment shall be paid for the month in which it was requested.

(2) The recipient family is eligible for a supplemental payment if its income for the month is less than 80 percent of the amount the State would pay for a similar family with no income. However, this percentage of the amount the State would pay for a similar family with no income may be set between 80 and 100 percent, as specified in the State plan. The supplemental payment equals the difference between the family's income in the payment month and that percentage.

(3) Supplemental payments shall be issued within 5 working days of request.

(b) *How income is treated.* For purposes of supplemental payments, income includes that month's assistance payment and any income received or expected to be received by the recipient, but does not include work-related expenses.

(1) The amount used for the assistance payment shall be the monthly assistance payment without regard to any recoupments made for prior overpayments or adjustments for prior underpayments.

(2) The agency may include as income cash in hand or available in bank accounts. It may also include as income any cash disregarded in determining need or the amount of the assistance payment, but not cash payments that are disregarded by paragraphs (c) on relocation assistance, (d) on educational grants or loans, (g) on payments for certain services and (l) on experimental housing allowances, of § 233.20(a)(4)(ii).

[44 FR 26083, May 4, 1979]

§ 233.28 Monthly reporting.

(a) State plans specifying retrospective budgeting shall require that recipients with earned income, other than income from self-employment, report that income to the agency monthly. The State may require recipients with unearned income, no income, or income from self-employment to report monthly. The agency shall provide a form for this purpose, which—

(1) Is written in clear simple language;

(2) Specifies the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the agency will delay or withhold payment if the form is not returned by the specified date;

(3) Identifies an individual or agency unit the recipient should contact to receive prompt answers to questions about information requested on the form, and provides a telephone number for this purpose;

(4) Includes a statement, to be signed by the recipient, that he or she understands that the information he or she provides may result in changes in assistance, including reduction or termination;

(5) Advises the recipient if supplemental payments are available and the proper procedures for initiating a request; and

(6) Advises the recipient of his or her right to a fair hearing on any decrease or termination of assistance or denial of a supplemental payment.

(b) The agency shall specify the date by which it must receive the monthly report. This date shall be at least 5 days from the end of the budget month and shall also allow the recipient at least 5 days to complete the report.

(c) The agency may consider a monthly report incomplete only if it is unsigned or omits information necessary to determine eligibility or compute the payment amount.

(d) The agency shall provide a stamped, self-addressed envelope for returning the monthly report.

(e) The agency shall make special provisions for persons who are illiterate or have other handicaps so that they cannot complete a monthly report form.

[44 FR 26083, May 4, 1979]

§ 233.29 How monthly reports are treated and what notices are required.

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report by the date specified in § 233.28 it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is being terminated. This notice must be received by the recipient no later than his or her resulting payment or in lieu of the payment.

(b) *What happens if the completed monthly report is received before the extension deadline.* (1) If the completed monthly report is not received by the date specified in § 233.28, the agency shall send a notice to the recipient. This notice shall inform him or her that the monthly report is overdue or is not complete and that he or she has at least 10 additional days to file. It must inform the recipient that termination may result if that is the agency's policy, if the report is not filed within the extension period. This notice must reach the recipient at least 10 days before the expected payment. However, in States in which the date specified in § 233.28 is within 10 days of the expected payment date, the notice must reach the recipient on or before the expected payment date.

(2) When the report is received within the extension period, the agency may delay payment to the recipient, as follows—

(i) In a State that pays within 25 days of the budget month the payment may be delayed 10 days;

(ii) In a State that pays within 25 to 45 days of the budget month, the payment may not be delayed beyond the 45th day.

(c) *What happens if a monthly report is not received by the end of the extension period.* An agency may ter-

minate assistance if it has not received a report or has received an incomplete report, and the 10 day extension period has expired. If the State decides to terminate assistance, it must send the recipient a notice which meets the requirements of § 205.10(a)(4)(i)(B) on adequate notice.

(d) *How a recipient may delay an adverse action based on a monthly report.* If a recipient's assistance is reduced or terminated based on information in the monthly report, and he or she requests a fair hearing within 10 days, the assistance payment shall be reinstated immediately at the previous month's level pending the hearing decision. The payment shall be made effective from the date assistance was reduced or terminated.

[44 FR 26084, May 4, 1979]

§ 233.31 Budgeting methods for AFDC.

(a) *Requirements for State plans.* A State plan for AFDC shall specify that all factors of eligibility shall be determined prospectively and the amount of the assistance payment shall be determined using retrospective budgeting as provided in §§ 233.31–233.37 except as provided in § 233.34. Budgeting methods for OA, AB, APTD, and AABD are described in §§ 233.21–233.29.

(b) *Definitions.* The following definitions apply to §§ 233.31 through 233.37:

(1) "Prospective budgeting" means that the agency shall determine eligibility (and compute the amount of assistance for the first one or two months) based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) "Retrospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on actual income or circumstances which existed in a previous month, the "budget month."

(3) "Budget month" means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) "Payment month" means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month.

[46 FR 46766, Sept. 21, 1981]

§ 233.32 Payment and budget months (AFDC).

A State shall specify in its plan for AFDC the time period covered by the payment (payment month) and the time period used to determine that payment (budget month) and whether it adopts (a) a one-month or two-month retrospective system; and (b) a one-month or two-month prospective system for the initial payment months. If a State elects to have a two-month retrospective system it must also elect a two-month prospective system.

[46 FR 46766, Sept. 21, 1981]

§ 233.33 Determining eligibility prospectively for all payment months (AFDC).

(a) The State plan for AFDC shall provide that the State shall determine all factors of eligibility prospectively for all payment months. Thus, the State agency shall establish eligibility based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

(b) When a IV-A agency receives an official report of a child support collection it shall consider that information as provided in § 232.20(a) of this chapter. (§ 232.20(a) explains the treatment of child support collections.

[46 FR 46766, Sept. 21, 1981]

§ 233.34 Computing the assistance payment in the initial one or two months (AFDC).

A State shall compute the amount of the AFDC payment for the initial month of eligibility and at the option of the State for the second month—

(a) Prospectively (except as in paragraphs (b) and (c) of this section); or

(b) Retrospectively if the applicant received assistance (or would have except for the prohibition on payments of less than $10) for the immediately preceding payment month (except where the State pays the second month after application prospectively); or

(c) Retrospectively if:

(1) Assistance had been suspended as defined in paragraph (d) of this section; and

(2) The initial month follows the month of suspension; and

(3) The family's circumstances for the initial month had not changed significantly from those reported in the corresponding budget month, e.g., loss of job.

(d) A State shall suspend, rather than terminate, assistance when—

(1) The agency has knowledge of, or reason to believe that ineligibility would be only for one payment month; and

(2) Ineligibility for that one payment month was caused by a regular and periodic extra paycheck from a recurring income source. For example, States may wish to suspend, cases that would have become ineligible periodically because of an extra payday in some months.

[46 FR 46766, Sept. 21, 1981]

§ 233.35 Computing the assistance payment after the initial one or two months (AFDC).

The State plan for AFDC shall provide:

(a) After the initial one or two payment months of assistance under § 233.34, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on income and other relevant circumstances in the corresponding budget month except as provided in § 233.20(a)(3)(iii). In any month for which an individual will be determined eligible prospectively and will be added to an existing AFDC assistance unit, the State must reflect the individual's needs in the payment for that month.

(b) Except as provided in § 233.34(b), for the first month in which retrospective budgeting is used (whether in the second month of eligibility or the third), the State shall not count income already considered for the first payment month which is not of a continuous nature.

[46 FR 46767, Sept. 21, 1981]

§ 233.36 Monthly reporting (AFDC).

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require each assistance unit to submit a report form to the agency monthly on—

(1) Budget month income, family composition, and other circumstances relevant to the amount of the assistance payment; and

(2) Any changes in income, resources, or other relevant circumstances affecting continued eligibility which the assistance unit expects to occur in the current month or in future months.

(3) Stepparent's income and alien sponsor's income and resources where appropriate.

(b) A State may exempt categories of recipients from reporting each month with prior approval by the Secretary. The plan shall include criteria for assuring (1) that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility or amount of assistance and (2) that the administrative cost of requiring those categories to report monthly will be greater than the program savings which would accrue.

(c) States shall also direct recipients to report information as defined in paragraph (a)(2) of this section to the agency as they become aware of expected changes rather than waiting to inform the State on the monthly report.

[46 FR 46767, Sept. 21, 1981]

§ 233.37 How monthly reports are treated and what notices are required (AFDC).

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report as specified in § 233.36, and if all eligibility conditions are met, it shall process the payment. The agency shall notify the recipient of any changes from the prior payment

and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is terminated as a result of information provided in the monthly report. The notice must be mailed to arrive no later than the resulting payment or in lieu of the payment. A recipient has 10 days from the date of the notice to request a hearing.

(b) *What happens if a completed monthly report is not received by the agency.* An agency may terminate assistance if it has received no report or has received only an incomplete report as defined by the State. In this case, the agency must send the recipient a notice meeting the requirements of § 205.10(a)(4)(i)(B) to arrive not later than the date it would have made payment if the agency had received a completed monthly report on time. If the recipient notifies the agency and files a completed report within 10 days of the date of this notice, the agency must accept the replacement form and make a payment based on the information on the form if the information indicates that the person is still eligible. If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing.

(c) *What happens if a completed monthly report is received but is not timely.* States must specify in their plans a definition of timeliness related to the filing of a monthly report and the number of days an individual has to report changes in earnings which impact eligibility. States must inform recipients what constitutes timeliness and that no disregard of earnings as described in § 233.20(a)(11)(iii)(C) ($30 and one-third, child care, and work expenses) will be applied to any earnings which are not reported in a timely manner. If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing.

[46 FR 46767, Sept. 21, 1981]

§ 233.39 Age.

(a) *Condition for plan approval.* A State plan under title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.

(b) *Federal financial participation.* (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(i) In OAA or AABD with respect to the aged, 65 years of age or over;

(ii) In AFDC, under 18 years of age; or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training and reasonably expected to complete the program before reaching age 19.

(iii) In AB or AABD with respect to the blind, any age;

(iv) In APTD or AABD with respect to the disabled, 18 years of age or older.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

[36 FR 3866, Feb. 27, 1971. Redesignated and amended at 46 FR 46766, Sept 21, 1981]

§ 233.40 Residence.

(a) *Condition for plan approval.* A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a

resident of the State except as provided in paragraph (b) of this section. For purposes of this section:

(1) A resident of a State is one: (i) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident.

(2) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

(b) *Exception.* A State plan under title I, X, XIV, or XVI need not include an individual who has been absent from the State for a period in excess of 90 consecutive days (regardless of whether the individual has maintained his or her residence in the State during this period) until he or she has been present in the State for a period of 30 consecutive days (or a shorter period specified by the State) in the case of such individual who has maintained residence in the State during such period of absence or for a period of 90 consecutive days (or a shorter period as specified by the State) in the case of any other such individual. An individual thus excluded under any such plan may not, as a consequence of that exclusion, be excluded from assistance under the State's title XIX plan if otherwise eligible under the title XIX plan (see 42 CFR 436.403).

(Secs. 402(b) and 1102 of the Social Security Act, as amended; 49 Stat. 627, as amended, 49 Stat. 647, as amended, 42 U.S.C. 602(b) and 1302)

[45 FR 26962, Apr. 22, 1980]

§ 233.50 Citizenship and alienage.

A State plan under title I (OAA); title IV-A (AFDC); title X (AB); title XIV (APTD); and title XVI (AABD-disabled) of the Social Security Act shall provide that an otherwise eligible individual, dependent child, or a caretaker relative or any other person whose needs considered in determining the need of the child or relative claiming aid, must be either:

(a) A citizen, or

(b) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including certain aliens lawfully present in the United States as a result of the application of the following provisions of the Immigration and Nationality Act:

(1) Section 207(c), after March 31, 1981—Aliens Admitted as Refugees.

(2) Section 203(a)(7), prior to April 1, 1980—Individuals who were Granted Status as Conditional Entrant Refugees.

(3) Section 208—Aliens Granted Political Asylum by the Attorney General.

(4) Section 212(d)(5)—Aliens Granted Temporary Parole Status by the Attorney General.

[46 FR 46767, Sept. 21, 1981]

§ 233.51 Deeming of sponsor's income and resources to the sponsored alien.

Definition: Sponsor is any person who executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. A State plan under title IV-A of the Social Security Act shall (with regard to an alien applying for AFDC for the first time after September 30, 1981, who is not exempted under paragraph (e) of this section and his or her sponsor) provide that:

(a) For a period of three years following entry into the United States, a sponsored alien shall provide the State agency with any information and documentation necessary to determine

the income and resources of the sponsor that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(b) For all sections under this part, the income and resources of a sponsor (and the sponsor's spouse if living with the sponsor) shall be deemed to be the unearned income and resources of an alien for three years following the alien's entry into the United States.

(1) Monthly income deemed available to the alien from the sponsor or the sponsor's spouse not receiving AFDC or SSI shall be:

(i) The sponsor's total monthly unearned income, added to the sponsor's total monthly earned income reduced by 20 percent (not to exceed $175) of the total of any amounts received by the sponsor in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred in producing self-employment income in the month.

(ii) The amount described in paragraph (b)(1)(i) of this section reduced by:

(A) The cash needs standard under its plan for a family of the same size and composition as the sponsor and those other people living in the same household as the sponsor who are claimed by the sponsor as dependents to determine his or her Federal personal income tax liability but whose needs are not taken into account in making a determination under § 233.20 of this chapter;

(B) Any amounts actually paid by the sponsor to people not living in the household who are claimed by the sponsor as dependents to determine his or her Federal personal income tax liability; and

(C) Actual payments of alimony or child support, with respect to individuals not living in the household.

(2) Monthly resources deemed available to the alien from the sponsor shall be the total amount of the resources of the sponsor determined as if he or she was applying for AFDC in his State of residence, less $1500.

(c) In any case where a person is the sponsor of two or more aliens, the income and resources of the sponsor to the extent they would be deemed the income and resources of any one of the aliens under the provisions of this section shall be divided equally among the sponsored aliens.

(d) Income and resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income or resources are actually available.

(e) The provisions of this section shall not apply to any alien who is:

(1) Admitted as a conditional entrant refugee to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 203(a)(7) of the Immigration and Nationality Act;

(2) Admitted as a refugee to the United States as a result of the application, after March 31, 1980 of the provisions of section 207(c) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act; or

(5) A Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422); or

(6) The dependent child of the sponsor or sponsor's spouse.

(f) The Secretary shall make information necessary to make a determination under this section and supplied under agreement with the Secretary of State and the Attorney General, available upon request to a concerned State Agency.

[46 FR 46767, Sept. 21, 1981]

§ 233.52 Overpayment to aliens.

A State Plan under Title IV-A of the Social Security Act, shall provide that:

(a) Any sponsor of an alien and the alien shall be jointly and severally liable for any overpayment of aid under the State plan made to the alien during the three years after the alien's entry into the United States due to the sponsor's failure to provide correct information under the provisions of § 233.51, except where such sponsors

were without fault or where good cause existed.

(b) When a sponsor is found to have good cause or be without fault (as defined in the State plan) for not providing information to the agency, the sponsor will not be held liable for the overpayment and recovery will not be made.

(c) An overpayment for which the sponsor and the alien are liable (as described in paragraph (a) of this section) shall be repaid to the State or recovered in accordance with § 233.20(a)(13). If the agency is unable to recover the overpayment through this method, funds to reimburse the agency for the overpayment shall be withheld from future payments to which the alien or sponsor is entitled under:

(1) Any State administered or supervised program established by the Social Security Act, or

(2) Any federally administered cash benefit program established by the Social Security Act.

[46 FR 46768, Sept. 21, 1981]

§ 233.60 Institutional status.

(a) *Federal financial participation.* (1) Federal financial participation under Title I, X, XIV, or XVI of the Social Security Act is not available in payments to or in behalf of any individual who is an inmate of a public institution except as a patient in a medical institution.

(2) (i) Federal financial participation under title X or XIV of the Social Security Act is not available in payments to or in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases.

(ii) Federal financial participation under title XVI of the Social Security Act is not available in payments to or in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

(3) For purposes of this paragraph:

(i) Federal financial participation is available in payments for the month in which an individual (if otherwise eligible) became an inmate of a public institution, or a patient in an institution for tuberculosis or mental diseases;

(ii) Whether an institution is one for tuberculosis or mental diseases will be determined by whether its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with tuberculosis or mental diseases (whether or not it is licensed);

(iii) An institution for the mentally retarded is not an institution for mental diseases;

(iv) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in such institution.

(b) *Definitions.* For purposes of Federal financial participation under paragraph (a) of this section:

(1) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter.

(2) "In an institution" refers to an individual who is admitted to participate in the living arrangements and to receive treatment or services provided there which are appropriate to his requirements.

(3) "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(4) "Inmate of a public institution" means a person who is living in a public institution. An individual is not considered an inmate when:

(i) He is in a public educational or vocational training institution, for purposes of securing education or vocational training, or

(ii) He is in a public institution for a temporary emergent period pending other arrangements appropriate to his needs.

(5) "Medical institution" means an institution which:

(i) Is organized to provide medical care, including nursing and convalescent care;

(ii) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a

continuing basis in accordance with accepted standards;

(iii) Is authorized under State law to provide medical care;

(iv) Is staffed by professional personnel who have clear and definite responsibility to the institution in the provision of professional medical and nursing services including adequate and continual medical care and supervision by a physician; sufficient registered nurse or licensed practical nurse supervision and services and nurse aid services to meet nursing care needs; and appropriate guidance by a physician(s) on the professional aspects of operating the facility.

(6) "Institution for tuberculosis" means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with tuberculosis, including medical attention, nursing care, and related services.

(7) "Institution for mental diseases" means an institution which is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care, and related services.

(8) "Patient" means an individual who is in need of and receiving professional services directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or alleviation of illness, disability, or pain.

[36 FR 3867, Feb. 27, 1971]

§ 233.70 Blindness.

(a) *State plan requirements.* A State plan under title X or XVI of the Social Security Act must:

(1) Contain a definition of blindness in terms of ophthalmic measurement. The following definition is recommended: An individual is considered blind if he has central visual acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20°.

(2) Provide, in any instance in which a determination is to be made whether an individual is blind or continues to be blind as defined under the State plan, that there will be an initial examination or re-examination performed by either a physician skilled in the diseases of the eye or by an optometrist, whichever the individual so selects.

(i) No examination is necessary when both eyes are missing.

(ii) Where an initial eye examination or re-examination is necessary, the physician or optometrist conducting such examination will submit to the State agency a report thereof, on such forms and in such manner, as may be prescribed for such purpose. A determination whether the individual meets the State's definition of blindness under the State plan will be based upon a review of such eye examination report as provided for in paragraph (a)(3) of this section, and other information or additional examination reports as the State deems necessary.

(3) Provide that each initial eye examination report and any subsequent re-examination report will be reviewed by a State reviewing physician skilled in the diseases of the eye (e.g., an ophthalmologist or an eye, ear, nose and throat specialist). Such physician is responsible for making the agency's decision that the applicant or recipient does or does not meet the State's definition of blindness, and for determining if and when reexaminations are necessary in periodic reviews of eligibility, as required in § 206.10(a)(9)(iii) of this chapter.

(b) *Federal financial participation—*(1) *Assistance payments.* Federal financial participation is available in assistance provided to or in behalf of any otherwise eligible person who is blind under the State's title X or XVI plan. Blindness may be considered as continuing until a determination by the reviewing physician establishes the fact that the recipient's vision has improved beyond the State's definition of blindness set forth under its State title of X or XVI plan.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the eye examination necessary to determine whether an individual is blind.

[36 FR 3867, Feb. 27, 1971, as amended at 40 FR 25819, June 19, 1975]

§ 233.80 Disability.

(a) *State plan requirements.* A State plan under title XIV or XVI of the Social Security Act must:

(1) Contain a definition of permanently and totally disabled, showing that:

(i) "Permanently" is related to the duration of the impairment or combination of impairments; and

(ii) "Totally" is related to the degree of disability.

The following definition is recommended:

"Permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, this substantially precludes him from engaging in useful occupations within his competence, such as holding a job.

Under this definition:

"Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient;

"Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in his particular situation in light of his impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which he can work, the amount he can produce in a given period of time, and the number of hours he is able to work.

(2) Provide for the review of each medical report and social history by technically competent persons—not less than a physician and a social worker qualified by professional training and pertinent experience—acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the State's definition of permanent and total disability. Under this requirement:

(i) The medical report must include a substantiated diagnosis, based either on existing medical evidence or upon current medical examination;

(ii) The social history must contain sufficient information to make it possible to relate the medical findings to the activities of the "useful occupation" and to determine whether the individual is totally disabled, and

(iii) The review physician is responsible for setting dates for reexamination; the review team is responsible for reviewing reexamination reports in conjunction with the social data to determine whether disabled recipients whose health condition may improve continue to meet the State's definition of permanent and total disability.

(3) Provide for cooperative arrangements with related programs, such as vocational rehabilitation services.

(b) *Federal financial participation—*(1) *Assistance payments.* Federal financial participation is available in payments to or in behalf of any otherwise eligible individual who is permanently and totally disabled. Permanent and total disability may be considered as continuing until the review team establishes the fact that the recipient's disability is no longer within the State's definition of permanent and total disability.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the medical examinations necessary to determine whether an individual is permanently and totally disabled.

[36 FR 3867, Feb. 27, 1971]

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the

death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State; and

(2) Where it has reason to believe that the home in which a relative and child receiving aid reside is unsuitable because of the neglect, abuse, or exploitation of such child, the State or local agency will:

(i) Bring such condition to the attention of a court, law-enforcement agency, or other appropriate agency in the State, providing whatever data it has with respect to the situation;

(ii) In reporting such conditions, use the same criteria as are used in the State for all other parents and children; and

(iii) Cooperate with the court or other agency in planning and implementing action in the best interest of the child.

(b) *Conditions for plan approval.* (1) A child may not be denied AFDC either initially or subsequently "because of the conditions of the home in which the child resides", or because the home is considered "unsuitable", unless "provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child". (Section 404(b) of the Social Security Act.)

(2) An otherwise eligible child who is under the age of 18 years may not be denied AFDC, regardless of whether he attends school or makes satisfactory grades.

(3) A state may elect to include in its AFDC program children age 18 who are full-time students in a secondary school, or in the equivalent level of vacational or technical training, and who may reasonably be expected to complete the program before reaching age 19.

(4)(i) A child may not be denied AFDC either initially or subsequently because a parent or other caretaker relative fails to cooperate with the child support agency in performing any of the activities needed to:

(A) Establish the paternity of a child born out of wedlock; or

(B) Obtain support from a person having a legal duty to support the child.

(ii) Any parent or caretaker relative who fails to so cooperate shall be treated in accordance with § 232.12 of this chapter.

(5) [Reserved]

(6) An otherwise eligible child may not be denied AFDC if a parent is mentally or physically incapacitated as defined in paragraph (c)(1)(iv) of this section.

(c) *Federal financial participation.* (1) Federal financial participation under title IV-A of the Social Security Act in payments with respect to a "dependent child," as defined in section 406(a) of the Act, is available within the following interpretations:

(i) *Needy child deprived by reason of.* The phrase "needy child * * * deprived * * * by reason of" requires that both need and deprivation of parental support or care exist in the individual case. The phrase encompasses the situation of any child who is in need and otherwise eligible, and whose parent—father or mother—either has died, has a physical or mental incapacity, or is continually absent from the home. This interpretation is equally applicable whether the parent was the chief bread winner or devoted himself or herself primarily to the care of the child, and whether or not the parents were married to each other. The determination whether a child has been de-

prived of parental support or care is made in relation to the child's natural parent or, as appropriate, the adoptive parent or stepparent described in paragraph (a) of this section.

(ii) *Death of a parent.* If either parent of a child is deceased, the child is deprived of parental support or care, and may, if he is in need and otherwise eligible, be included within the scope of the program.

(iii) *Continued absence of the parent from the home.* Continued absence of the parent from the home constitutes the reason for deprivation of parental support or care when the parent is out of the home, the nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(iv) *"Physical or mental incapacity".* "Physical or mental incapacity" of a parent shall be deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the otherwise eligible child and be expected to last for a period of at least 30 days. In making the determination of ability to support, the agency shall take into account the limited employment opportunities of handicapped individuals.

A finding of eligibility for OASDI or SSI benefits, based on disability or blindness is acceptable proof of incapacity for AFDC purposes.

(v) *"Living with [a specified relative] in a place of residence maintained * * * as his * * * own home".*

(A) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:

(*1*) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

(*2*) Stepfather, stepmother, stepbrother, and stepsister.

(*3*) Person who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.

(*4*) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

(B) A home is the family setting maintained or in process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be "living with" his relative even though:

(*1*) He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or

(*2*) Legal custody is held by an agency that does not have physical possession of the child.

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC;

(ii) Payments made for the entire month in the course of which a child leaves the home of a specified relative,

80-152 O—82—9

provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC; and

(iii) Payments made to persons acting for relatives specified in section 406(a)(1) of the Act in emergency situations that deprive the child of the care of the relative through whom he has been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.

(iv) At State option, (A) payments with respect to a pregnant woman with no other children receiving assistance, and additionally, at State option, (B) payments for the purpose of meeting special needs occasioned by or resulting from pregnancy both for the pregnant woman with no other children as well as for the pregnant woman receiving AFDC. However, for both (c)(2)(iv) (A) and (B) of this section, it must be medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children. Federal financial participation is not available to meet the needs of the unborn child. (Refer to Medicaid regulations for title XIX eligibility of pregnant women).

(3) Federal financial participation (at the 50 percent rate) is available in any expenses incurred in establishing eligibility for AFDC, including expenses incident to obtaining necessary information to determine the existence of incapacity of a parent or pregnancy of a mother.

(Secs. 406 and 1102 of the Social Security Act, as amended, 49 Stat. 629 and 647 as amended; 42 U.S.C. 606 and 1302)

[36 FR 3868, Feb. 27, 1971 as amended at, 39 FR 34038, Sept. 23, 1974; 40 FR 27156, June 26, 1975; 42 FR 6584, Feb. 3, 1977; 44 FR 12424, Mar. 7, 1979; 45 FR 58126, Sept. 2, 1980; 46 FR 46768, Sept. 21, 1981]

§ 233.100 Dependent children of unemployed parents.

(a) *Requirements for State Plans.* If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV-A of the Social Security Act must, except as specified in paragraph (b) of this section:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 of this chapter. Such definition must include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month;

Except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) when the conditions set forth in paragraphs (a)(3) (i), (ii), and (iii) of this section are met:

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid.

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, re-

fused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such an offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, will be made by that office or agency.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(*a*) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(*b*) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(*c*) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent: (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, or (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law.

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which he or she received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Act), or in which he or she participated in a community work experience program under section 409 of the Act or the work incentive program established under title IV-C of the Act.

(v) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he would have been eligible to receive such benefits upon filing application, or he performed work not covered by such law which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing application.

(vi)(A) The "parent who is the principal earner" means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income in such 24-month period, the State shall designate which parent shall be the principal earner.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406(a)(1) of the Act with whom such child is living,

(i) If and for so long as such child's parent, unless exempt under 45 CFR 224.20, is not registered for the work incentive program or if exempt under clause (b)(6) of § 224.20, is not registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for

unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation.

(6) Provide that within 30 days after the receipt of aid with respect to such children, such unemployed principle earners will be certified for participation in the Work Incentive Program, as provided in section 402(a)(19) of the Act and the regulations relating thereto.

(7) Provide, where application for aid with respect to a dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) is made within 6 months after the effective date of the modification of the State plan in accordance with the provisions in paragraphs (a) (1) through (6) of this section, that the parent of such child will be considered to have met the requirements of paragraph (a)(3)(iii) of this section if he or she met such requirements at any time after April 1961 and prior to the date of such application.

(8) Provide, if the approved State plan in effect prior to January 1, 1968, including aid with respect to dependent children of unemployed parents, that for purposes of paragraph (a)(7) of this section an individual who received such aid under such plan for the last month ending before the effective date of the modification referred to in paragraph (a)(7) of this section will be considered to have filed application for aid under the plan as modified on the day after such effective date.

(b) *Exception.* Under the law, a State which had in operation an AFDC-Unemployed Parent Program under title IV of the Act at any time during the period October 1-December 31, 1967, is not required prior to July 1, 1969, to include any additional child or family under its approved State plan, by reason of the requirements set forth in paragraph (a) of this section.

(c) *Federal financial participation.* (1) Federal financial participation is available in payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child.

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principle earner is employed less than 100 hours a month; or, exceeds that standard for a particular month if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month.

(iv) Whose parent who is the principle earner (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law, or (*c*) is an individual whose application for aid was made within the period referred to in paragraph (a) (7) or (8) of this section and who by virtue of the requirements in such paragraph (a) (7) or (8) would be considered to have met the conditions in paragraph (c)(1)(iv) (*a*) or (*b*) of this section; and

(v) Whose parent who is the principle earner (*a*) is currently registered with the public employment offices in the State, and (*b*) with respect to any week, does not receive unemployment compensation under an unemployment compensation law of a State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth -in paragraph (c)(1) of this section, where such payments were made.

(i) For any part of the 30 day period prior to the receipt of such payment, if during such period the parent who is the principle earner was not unemployed (as defined by the State pursuant to paragraph (a)(1) of this section);

(ii) For such 30-day period, if during such period the parent refused without good cause a bona fide offer of employment or training for employment; and

(iii) For any period beginning with the 31st day after the receipt of such aid, if and for as long as no action is taken during such period to certify the parent for participation in the Work Incentive Program as provided in section 402(a)(19) of the Act and the regulations relating thereto.

(Sec. 407, 81 Stat. 882; 42 U.S.C. 607)

[34 FR 1146, Jan. 24, 1969, as amended at 36 FR 13604, July 22, 1971; 37 FR 12202, June 20, 1972; 38 FR 18549, July 12, 1973; 38 FR 26608, Sept. 24, 1973; 42 FR 16145, Feb. 3, 1977; 46 FR 46769, Sept. 21, 1981; 46 FR 50372, Oct. 13, 1981]

§ 233.106 Denial of AFDC benefits to strikers.

(a) *Condition for plan approval.* A State plan under title IV-A of the Social Security Act must:

(1) Provide that participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept, employment.

(2)(i) Provide for the denial of AFDC benefits to any family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike; and

(ii) Provide that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike.

(b) *Definitions.* (1) The State must define "strike" by using the National Labor Relations Board definition (29 U.S.C. 142(2)) or another definition of the term that is currently in State law.

(2) The State must define the term "participating in a strike."

[46 FR 46769, Sept 21, 1981]

§ 233.110 AFDC foster care.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act must:

(1) Provide that aid will be given in the form of foster care for each otherwise eligible child:

(i) Who was removed after April 30, 1961, from the home of a relative specified in the AFDC plan, as a result of a judicial determination that continuance in the home of the relative would be contrary to his welfare, for any reason, and who has been placed in foster care as a result of such determination; and

(ii) (*a*) Who, in or for the month in which that court action was initiated, was receiving AFDC, or would have received AFDC if application had been made, or

(*b*) Who lived with a relative specified in the AFDC plan within 6 months prior to the month in which that court action was initiated, and who would have received AFDC in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made for him; and

(iii) Whose placement and care are the responsibility of the State agency administering or supervising the administration of the AFDC plan, or, if the State so elects, are the responsibility of any other public agency, or type or types of public agencies specified in the plan, with whom the State agency has a currently effective agreement that provides for development of a plan satisfactory to the State agency for AFDC-FC children in accordance with paragraph (a)(2) of this section and that contains other provisions necessary to achieve the objectives of the State's AFDC plan.

(2) Provide for development of a plan for each child described in paragraph (a)(1) of this section, so that:

(i) He will be placed in a foster family home or a child care institution in accordance with his needs;

(ii) His need for and the appropriateness of his care and services in such placement will be reviewed not less frequently than every 6 months;

(iii) Services will be provided to improve the conditions in the home from which he was removed or to make possible his placement in the home of another relative under the State's AFDC plan. (See § 220.19 of this chapter.)

(3) Provide that maximum use will be made of the services of employees of the State public welfare agency responsible for the plan for child-welfare services under title IV-B of the Act or of any local agency participating in the administration of such plan.

(4) Specify:

(i) In what types of child care institutions (private nonprofit, or public, or both), in addition to foster family homes, placement will be made; and

(ii) Whether payments will be made to foster homes and institutions only or also to other agencies.

(5) Provide that there will be specific criteria for determining the amount of payment for foster care in foster family homes and in child care institutions. In establishing rates of payment to institutions, only those items included for care in foster family homes will be included, and overhead costs of the institution will be excluded.

Under the requirements of this paragraph, provision must be made for both foster family care and institutional care in accordance with the individual child's needs; public institutions may be used, without Federal financial participation, to discharge the institutional obligation in whole or in part; and the use of institutions outside the State will also meet the requirement for the provision of institutional care.

(b) *Federal financial participation.* (1) Federal financial participation is available, effective January 1, 1968, in AFDC-FC payments not to exceed an average of $100 per month per recipient, made on behalf of children as specified in section 408 of the Social Security Act, who are included in the approved State AFDC plan and who are placed in a foster family home, or nonprofit private child-care institution, licensed or approved by the agency which is responsible for licensing or approval of such facilities in the State where it is situated. The maximum of $100 average per month per recipient may be disregarded when the State claims Federal funds under the provisions of section 1118 of the Act.

(2) Federal financial participation is available in AFDC-FC payments made to an individual providing care in a foster family home, to a private nonprofit child care institution, or to a cooperating public or nonprofit private child placement or child-care agency.

[36 FR 3869, Feb. 27, 1971]

§ 233.120 Emergency assistance to needy families with children.

(a) *Requirements for State plans.* A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:

(1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b)(1) of this section for scope of Federal financial participation.)

(2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.

(3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.

(4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(5) Provide that emergency assistance will be given forthwith.

(b) *Federal financial participation.* Beginning with the effective date of approval of the amendment to the State plan for AFDC which provides for emergency assistance to needy families with children pursuant to section 406(e) of the Act:

(1) Federal financial participation is available for emergency assistance to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if—

(i) Such child is (or, within 6 months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home,

(ii) Such child is without resources immediately accessible to meet his needs,

(iii) The emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home, and

(iv) His destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.

(2) The rate of Federal financial participation in expenditures during a quarter as emergency assistance in accordance with the provisions of an approved State plan is 50 percent of the total amount of such expenditures which are (i) in the form of money payments, payments in kind, or such other payments as the State agency specifies, including loans and vendor payments, or medical or remedial care recognized under State law, with respect to or on behalf of individuals described in paragraph (b)(1) of this section; (ii) for administration, including costs incurred in determining eligibility, in the payment process, and for other related administrative activities; and (iii) for the following services provided to individuals described in paragraph (b)(1) of this section, directly by staff of the agency, or by purchase from other sources: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(3) Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period. Another condition for Federal participation is that the State has a reasonable method of determining the value of goods in kind or services provided for emergency assistance.

[34 FR 393, Jan. 10, 1969, as amended at 39 FR 5316, Feb. 12, 1974]

§ 233.145 Expiration of medical assistance programs under titles I, IV-A, X, XIV and XVI of the Social Security Act.

(a) Under the provisions of section 121(b) of Pub. L. 89-97, enacted July 30, 1965, no payment may be made to any State under title I, IV-A, X, XIV or XVI of the Social Security Act for aid or assistance in the form of medical or any other type of remedial care for any period after December 31, 1969. However, these provisions do not affect the availability of Federal financial participation in the cost of medical or remedial care furnished under title IV-A of the Act (pursuant to sections 403(a)(5) and 406(e)) of the Act, as emergency assistance to needy families with children (see § 233.120 of this part), subject to the provisions of paragraph (c)[1] of this section. Federal financial participation in vendor payments for medical care and services is not otherwise available except under title XIX of the Act.

(b) Under the provisions of section 4(c) of Pub. L. 92-223, enacted December 28, 1971, and the provisions of section 292 of Pub. L. 92-603, enacted October 30, 1972:

(1) In the case of any State which on January 1, 1972, had in effect a State plan approved under title XIX of the Social Security Act, section 1121 of the Act authorizing payments under title I, X, XIV, or XVI of the Act for assistance in the form of institutional services in intermediate care facilities is rescinded; and

(2) In the case of any State which on January 1, 1972, did not have in effect a State plan approved under title XIX of the Act, Federal financial participation is available in assistance in the form of institutional services in intermediate care facilities pursuant to section 1121 of the Act and under the provisions of § 234.130 of this chapter until the first day of the first month

[1]See notice published 8/29/73 (38 FR 23337).

after January 1, 1972, that the State has in effect a State plan approved under title XIX.

(c)(1) Under the provisions of section 249D of Pub. L. 92-603, enacted October 30, 1972, Federal matching is not available for any portion of any payment by any State under titles I, IV-A, X, XIV, or XVI of the Social Security Act for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act, if such care is (or could be provided, under a State plan approved under title XIX of such Act, by an institution certified under such title XIX. The effective date of this proposed provision will be the date of publication of the final regulation in the FEDERAL REGISTER.

(2) For purposes of this paragraph,

(i) An institution (see § 233.60(b)(1) of this chapter) is considered to provide medical or remedial care if it provides any care or service beyond room and board because of the physical or mental condition (or both) of its inpatients;

(ii) An inpatient is an individual who is living in an institution which provides medical or remedial care and who is receiving care or service beyond room and board because of his physical or mental condition (or both).

(iii) Federal financial participation is not available for any portion of the payment for care of an inpatient. It is immaterial whether such payment is made as a vendor payment or as a money payment or other cash assistance payment. It is also immaterial whether the payment is divided into components, such as separate amounts or payments for room and board, and for care or services beyond room and board, or whether the payment is considered to meet "basic" needs or "special" needs. If, however, a money payment (or protective payment) is made to an individual who is living in an institution, and such payment does not exceed a reasonable rate for room, board and laundry for individuals not living in their own homes, and no additional payment is made for such individual's care in the institution, Federal financial participation is available in the money payment (or protective payment) since the individual may spend the funds at his discretion and obtain room and board at the place of his choice.

(iv) Federal financial participation is available in cash assistance payments to meet the needs of an inpatient for specific medical services, such as dental care or prescription drugs, which generally are not delivered in an institutional setting and in fact are not provided by the institution to the inpatient, provided that such services are not available to the individual under the State's approved title XIX plan.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[38 FR 26379, Sept. 20, 1973, as amended at 38 FR 32912, Nov. 29, 1973]

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Sec.

234.11 Assistance in the form of money payments; deduction of food stamp costs.
234.60 Protective, vendor, and two-party payments for dependent children.
234.70 Protective payments for the aged, blind, or disabled.
234.75 Rent payments to public housing agencies.
234.120 Federal financial participation.
234.130 Assistance in the form of institutional services in intermediate care facilities.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted.

§ 234.11 Assistance in the form of money payments; deduction of food stamp costs.

(a) Federal financial participation is available in money payments made under a State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act to eligible families and individuals. Money payments are payments in cash, checks, or warrants immediately redeemable at par, made to the grantee or his legal representative with no restrictions imposed by the agency on the use of funds by the individual.

(b) Amounts deducted for the purchase of food stamps are part of the money payments when the deductions

are made (1) under arrangements between the State agency and the U.S. Department of Agriculture, (2) on a voluntary basis at the specific written request of individuals, and (3) in accordance with methods approved by and safeguards established by the Social and Rehabilitation Service.

[36 FR 22238, Nov. 23, 1971]

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) *State plan requirements.* (1) If a State plan for AFDC under title IV-A of the Social Security Act provides for protective vendor and two-party payments for other than WIN and Community Work Experience Programs (CWEP) cases, and cases in which the caretaker relative fails to meet the eligibility requirements of §§ 232.11 or 232.12 of this chapter, it must meet the requirements in paragraphs (a)(2) through (11) of this section. In addition, the plan may provide for protective vendor and two-party payments at the request of the recipient as provided in paragraph (a)(14) of this section.

(2)(i) Methods will be in effect to identify children whose relatives have demonstrated such an inability to manage funds that payments to the relative have not been or are not currently used in the best interest of the child. This means that the relative has misused funds to such an extent that allowing him or her to manage the AFDC grant is a threat to the health or safety of the child.

(ii) Non-payment of bills may be used as an indication that mismanagement may exist. However, a determination of such mismanagement shall not be made solely on the fact that bills are not paid on a timely basis. All relevant considerations shall be taken into account including, but not limited to the following:

(A) Whether the family has experienced some emergency or extraordinary event for which it was appropriate for available funds to be spent;

(B) Whether expenses for necessary bills exceed the recipient's grant and other income; and

(C) Whether the family has withheld the payment as a reasonable exercise of consumer rights when there is a legitimate dispute as to whether terms of an agreement have been met.

(iii) Under State agency procedures, the recipient shall be notified whenever a creditor requests a protective, vendor, or two-party payment for mismangement on the basis of non-payment of bills.

(iv) The recipient shall be notified by the agency of a decision not to use a protective, vendor, or two-party payment if such payment has been requested by a creditor.

(v) A statement of the specific reasons that demonstrate the need for making protective, vendor, and two-party payments must be placed in the file of the child involved.

(3) Criteria will be established to identify the circumstances under which protective, vendor, or two-party payments will be made in whole or in part to—

(i) Another individual who is interested in or concerned with the welfare of the child or relative; or

(ii) A person or persons furnishing food, living accommodations or other goods, services, or items to or for the child, relative, or essential person.

(4) Procedures will be established for making protective, vendor, or two-party payments. Under this provision, part of the payment may be made to the family and part may be made to a protective payee or to a vendor, or part may be made in the form of two-party payments, i.e., checks which are drawn jointly to the order of the recipient and the person furnishing goods, services, or items and negotiable only upon endorsement by both the recipient and the other person.

(5) [Reserved].

(6) There will be responsibility to assure referral to social services for appropriate action to protect recipients where problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle.

(7) Standards will be established for selection:

(i) Of protective payees, who are interested in or concerned with the recepient's welfare, to act for the recipient in receiving and managing assistance, with the selection of a protective payee being made by the recipient, or

with his participation and consent, to the extent possible. If it is in the best interest of the recipient for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families; and the public welfare department will employ such additional staff as may be necessary to provide protective payees. The selection will not include: the executive head of the agency administering public assistance; the person determining financial eligibility for the family; special investigative or resource staff; or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods, services, or items dealing directly with the recipient.

(ii) Of such persons providing goods, services, or items with the selection of such persons being made by the recipient, or with his participation and consent, to the extent possible.

(8) The agency will undertake and continue special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family.

(9) Review will be made as frequently as indicated by the individual's circumstances, and at least every 6 months, of:

(i) The need for protective, vendor, and two-party payments; and

(ii) The way in which a protective payee's responsibilities are carried out.

(10) Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, as follows:

(i) When relatives are considered able to manage funds in the best interest of the child, there will be a return to money payment status.

(ii) When it appears that need for protective, vendor, or two-party payments will continue or is likely to continue beyond 2 years because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a guardian or other legal representative will be sought and such payments will terminate when the appointment has been made.

(11) Opportunity for a fair hearing will be given to any individual claiming assistance in relation to the determination—

(i) That a protective, vendor, or two-party payment should be made or continued.

(ii) As to the payee selected.

(12) For WIN and CWEP cases, the State plan must provide that, when protective or vendor payments are made pursuant to §§ 224.51(a)(1) and 238.22 of this chapter (because an individual has been found to have refused without good cause to participate in the WIN or CWEP program or to accept a bona fide offer of employment) only paragraphs (a)(7), (9)(ii), and (11) (i) and (ii) of this section will be applicable. Under these circumstances, when protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, at least the greater part of the payment will be through this method. Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, with return to money payment status when adults who refused training or employment without good cause either accept training or employment or agree to do so. In the case of continuing refusal of the relative to participate, payments will be continued for the children in the home in accordance with this paragraph.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11 or 232.12 of this chapter by failing to assign rights to support or cooperate in determining paternity and securing support, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11 and 232.12 of this chapter.

(14) If the plan provides for protective, vendor or two-party payments:

(i) The State may use any combination of protective, vendor or two-party payments (at the request of the recipient),

(ii) The request must be in writing from the recipient to whom payment would otherwise be made in an unrestricted manner and must be recorded or retained in the case file, and

(iii) The restriction will be discontinued promptly upon the written request of the recipient who initiated it.

(b) *Federal financial participation.* Federal financial participation is available in payments which otherwise qualify as money payments with respect to an eligible dependent child, but which are made as protective, vendor or two-party payments under this section. Payrolls must identify protective, vendor, or two-party payments either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll.

The payment must be supported by an authorization of award through amendment of an existing authorization document for each case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official, showing the name of each eligible child and relative, the amount of payment authorized and the name of the protective, vendor or two-party payee.

(Secs. 402, 403, 406, and 1102 of the Social Security Act, as amended, 49 Stat. 627, as amended, 49 Stat. 628, as amended, 49 Stat. 629, as amended, 49 Stat. 647, as amended, 42 U.S.C. 602, 603, 606, and 1302, and sec. 3 of Pub. L. 95-171, 91 Stat. 1354)

[37 FR 9025, May 4, 1972, as amended at 37 FR 12202, June 20, 1972; 40 FR 27156, June 26, 1975; 40 FR 52376, Nov. 10, 1975; 45 FR 20480, Mar. 28, 1980; 46 FR 46770, Sept. 30, 1981]

§ 234.70 Protective payments for the aged, blind, or disabled.

(a) *State plan requirements.* If a State plan for OAA, AB, APTD, or AABD under the Social Security Act includes provisions for protective payments, the State plan must provide that:

(1) Methods will be in effect to determine that needy individuals have, by reason of physical or mental condition, such inability to manage funds that making payment to them would be contrary to their welfare; such methods to include medical or psychological evaluations, or other reports of physical or mental conditions including observation of gross conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss.

(2) There will be responsibility to assure referral to social services for appropriate action to protect recipients where problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle. (See paragraph (a)(5) of this section.)

(3) Standards will be established for selection of protective payees who are interested in or concerned with the individual's welfare, to act for the individual in receiving and managing assistance, with the selection of a protective payee being made by the individual, or with his participation and consent, to the extent possible. If it is in the best interest of the individual for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families or for the disabled or aged group of which the recipient is a member; and such staff of the public welfare department will be utilized only to the extent that the department has adequate staff for this purpose. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the individual; special investigative or resource staff, or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods or services dealing directly with the recipient—such as the proprietor, administrator or fiscal agent of a nursing home, or social care, medical or nonmedical institution, except for the superintendent of a public institution for mental diseases

or a public institution for the mentally retarded, or the designee of such superintendent, when no other suitable protective payee can be found and there are appropriate staff available to assist the superintendent in carrying out the protective payment function.

(4) Protective payments will be made only in cases in which the assistance payment, with other available income, meets all the needs of the individual, using the State's standards for assistance for the pertinent program, not standards for protective payment cases only.

(5) The agency will undertake and continue special efforts to protect the welfare of such individuals and to improve, to the extent possible, their capacity for self-care and to manage funds.

(6) Reconsideration of the need for protective payments and the way in which a protective payee's responsibilities are carried out will be as frequent as indicated by the individual's circumstances and at least every 6 months.

(7) Provision will be made for appropriate termination of protective payments as follows:

(i) When individuals are considered able to manage funds in their best interest, there will be a return to money payment status.

(ii) When a judicial appointment of a guardian or other legal representative appears to serve the best interest of the individual, such appointment will be sought and the protective payment will terminate when the appointment has been made.

(8) Opportunity for a fair hearing will be given to any individual claiming assistance in relation to the determination that a protective payment should be made or continued, and in relation to the payee selected.

(b) *Federal financial participation.* Federal financial participation is available for payments, which otherwise qualify as money payments with respect to a needy individual, but which are made to a protective payee under paragraph (a)(3) of this section. The payment must be supported by an authorization of award through amendment of an existing authorization document for such case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official showing the name of each eligible individual, the amount of payment authorized and the name of the protective payee. Payrolls must identify protective payment cases either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll.

[34 FR 1323, Jan. 28, 1969]

§ 234.75 Rent payments to public housing agencies.

At the option of a State, if its plan approved under title I, X, XIV, or XVI of the Social Security Act so provides, Federal financial participation under such title is available in rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of OAA, AB, APTD, or AABD. Such Federal financial participation is available in rent payments only to the extent that they do not exceed the amount included for rent under the State's standard of assistance or the amount of rent due under applicable law, whichever is less.

[38 FR 26380, Sept. 20, 1973]

§ 234.120 Federal financial participation.

Federal financial participation is available in assistance payments made under a State plan under title I, IV–A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and in which an application has been received by the agency. Such assistance payments include:

(a) Money payments (titles I, IV–A, X, XIV, and XVI, see § 234.11 of this chapter);

(b) Protective and vendor payments for dependent children (title IV–A, see § 234.60 of this chapter);

(c) Protective payments for the aged, blind, or disabled (titles I, X, XIV, and XVI, see § 234.70 of this chapter);

(d) AFDC foster care payments (title IV-A, see § 233.110 of this chapter);

(e) Vendor payments for institutional services in intermediate care facilities (titles I, X, XIV, and XVI), but only in a State that did not, as of January 1, 1972, have an approved plan under title XIX of the act, and only until such State has such a plan in effect (see § 234.130 of this chapter);

(f) Emergency assistance to needy families with children (title IV-A, see § 233.120 of this chapter);

(g) Vendor payments for home repairs (titles I, IV-A, X, XIV, and XVI, see § 233.20(c) of this chapter); and

(h) Rent payments to public housing agencies (titles I, X, XIV, and XVI, see § 234.75 of this chapter).

[38 FR 26380, Sept. 20, 1973]

§ 234.130 Assistance in the form of institutional services in intermediate care facilities.

(a) *Applicability and State plan requirements.* A State which, on January 1, 1972, did not have in effect a State plan approved under title XIX of the Social Security Act may provide assistance under title I, X, XIV, or XVI of the Act in the form of institutional services in intermediate care facilities as authorized under title XI of the Act, until the first day of the first month (occurring after January 1, 1972) that such State does have in effect a State plan approved under title XIX of the Act. In any State which may provide such assistance as authorized under title XI of the Act, a State plan under title I, X, XIV, or XVI of the Act which includes such assistance must:

(1) Provide that such benefits will be provided only to individuals who:

(i) Are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to receive assistance, under the State plan, in the form of money payments; and

(ii) Because of their physical or mental condition (or both) require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities; and

(iii) Do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX) is designed to provide.

(2) Provide that, in determining financial eligibility for benefits in the form of institutional services in intermediate care facilities, available income will be applied, first for personal and incidental needs including clothing, and that any remaining income will be applied to the costs of care in the intermediate care facility.

(3) Provide methods of administration that include:

(i) Placing of responsibility, within the State agency, with one or more staff members with sufficient staff time exclusive of other duties to direct and guide the agency's activities with respect to services in intermediate care facilities, including arrangements for consultation and working relationships with the State standard-setting authority and State agencies responsible for mental health and for mental retardation;

(ii) In relation to authorization of benefits, provisions for evaluation by a physician of the individual's physical and mental condition and the kinds and amounts of care he requires; evaluation by the agency worker of the resources available in the home, family and community; and participation by the recipient in determining where he is to receive care, except that in the case of services being provided in a Christian Science Sanatorium, certification by a qualified Christian Science practitioner that the individual meets the requirements specified in paragraphs (a)(1) (ii) and (iii) of this section may be substituted for the evaluation by a physician;

(iii) Provisions for redetermination at least semiannually that the individual is properly a recipient of intermediate care.

(4) Provide for regular, periodic review and reevaluation no less often than annually (by or on behalf of the State agency administering the plan and in addition to the activities described in paragraph (a)(3) of this section) of recipients in intermediate care facilities to determine whether their current physical and mental conditions are such as to indicate continued

placement in the intermediate care facility, whether the services actually rendered are adequate and responsive to the conditions and needs identified, and whether a change to other living arrangements, or other institutional facilities (including skilled nursing homes) is indicated. Such reviews must be followed by appropriate action on the part of the State agency administering the plan. They must be conducted by or under the supervision of a physician with participation by a registered professional nurse and other appropriate medical and social service personnel not employed by or having a financial interest in the facility, except that, in the case of recipients who have elected care in a Christian Science sanatorium, review by a physician or other medical personnel is not required.

(5) Provide that all services with respect to social and related problems which the agency makes available to applicants and recipients of assistance under the plan will be equally available to all applicants for and recipients of benefits in the form of institutional services in intermediate care facilities.

(6) Specify the types of facilities, however described, that will qualify under the State plan for participation as intermediate care facilities, and provide for availability to the Department of Health and Human Services, upon request of (i) copies of the State's requirements for licensing of such facilities, (ii) any requirements imposed by the State in addition to licensing and to definition of intermediate care facilities, and (iii) a description of the manner in which such requirements are applied and enforced including copies of agreements or contracts, if any, with the licensing authority for this purpose.

(7) Provide for and describe methods of determining amounts of vendor payments to intermediate care facilities which systematically relate amounts of the payment to the kinds, levels, and quantities of services provided to the recipients by the institutions and to the cost of providing such services.

(b) *Other requirements.* Except when inconsistent with purposes of section 1121 of the Act or contrary to any provision therein, any modification, pursuant thereto, of an approved State plan shall be subject to the same conditions, limitations, rights, and obligations as obtained with respect to such approved State plan. Included specifically among such conditions and limitations are the provisions of titles I, X, XIV, and XVI relating to payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution).

(c) *Federal financial participation.* (1) Federal financial participation is available under section 1121 of the Act in vendor payments for institutional services provided to individuals who are eligible under the respective State plan and who are residents in intermediate care facilities. The rate of participation is the same as for money payments under the respective title or, if the State so elects, at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the Act. Such Federal financial participation ends on the date specified in paragraph (c)(2) of this section, or 12 months after the date when the State first has in effect a State plan approved under title XIX of the Act, whichever is later.

(2) For the period from January 1, 1972, to the date on which a determination is made under the provisions of 42 CFR 449.33 as to a facility's eligibility to receive payments for intermediate care facility services under the medical assistance program, title XIX of the Act, but not later than 12 months following the effective date of these regulations, Federal financial participation in payments for such services under title XIX is governed by the provisions of this section, applied to State plans under title XIX.

(d) *Definition of terms.* For purposes of section 1121 of the Social Security Act, the following definitions apply:

(1) *Institutional services.* The term, "institutional services", means those items and services provided by or under the auspices of the institution which contribute to the health, comfort, and well-being of the residents thereof; except that the term, "institutional services," does not include allowances for clothing and incidental

expenses for which money payments to recipients are made under the plan, nor does it include medical care, in a form identifiable as such and separable from the routine services of the facility, for which vendor payments may be made under a State plan approved under title XIX.

(2) *Distinct part of an institution.* A "distinct part" of an institution is defined as a part which meets the definition of an intermediate care facility and the following conditions:

(i) *Identifiable unit.* The "distinct part" of the institution is an entire unit such as an entire ward or contiguous wards, wing, floor, or building. It consists of all beds and related facilities in the unit and houses all residents, except as hereafter provided, for whom payment is being made for intermediate care. It is clearly identified and is approved, in writing, by the agency applying the definition of intermediate care facility herein.

(ii) *Staff.* Appropriate personnel are assigned and work regularly in the unit. Immediate supervision of staff is provided in the unit at all time by qualified personnel.

(iii) *Shared facilities and services.* The distinct part may share such central services and facilities as management services, building maintenance and laundry, with other units.

(iv) *Transfers between distinct parts.* In a facility having distinct parts devoted to skilled nursing home care and intermediate care, which facility has been determined by the appropriate State agency to be organized and staffed to provide services according to individual needs throughout the institution, nothing herein shall be construed to require transfer of an individual within the institution when in the opinion of the individual's physician such transfer might be harmful to the physical or mental health of the individual.

(3) *Intermediate care facility.* An intermediate care facility is an institution or a distinct part thereof which

(i) Is licensed, under State law to provide the residents thereof, on a regular basis, the range or level of care and services as defined in paragraph (d)(4) of this section, which is suitable to the needs of individuals who

(*a*) Because of their physical or mental limitations or both, require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities, and

(*b*) Do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX is designed to provide:

(ii) Does not provide the degree of care required to be provided by a skilled nursing home furnishing services under a State plan approved under title XIX:

(iii) Meets such standards of safety and sanitation as are applicable to nursing homes under State law; and

(iv) Regularly provides a level of care and service beyond board and room.

The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Mass.

(4) *Range or level of care and services.* The range or level of care and services suitable to the needs of individuals described in paragraph (d)(3)(i) of this section is to be defined by the State agency. The following items are recommended as a minimum.

(i) *Admission, transfer, and discharge of residents.* The admission, transfer, and discharge of residents of the facility are conducted in accordance with written policies of the institution that include at least the following provisions.

(*a*) Only those persons are accepted into the facility whose needs can be met within the accommodations and services the facility provides;

(*b*) As changes occur in their physical or mental condition, necessitating service or care not regularly provided by the facility, residents are transferred promptly to hospitals, skilled nursing homes, or other appropriate facilities;

(*c*) The resident, his next of kin, and the responsible agency if any, are consulted in advance of the discharge of any resident, and casework services or other means are utilized to assure that

adequate arrangements exist for meeting his needs through other resources.

(ii) *Personal care and protective services.* The types and amounts of protection and personal service needed by each resident of the facility are a matter of record and are known to all staff members having personal contact with the resident. At least the following services are provided.

(*a*) There is, at all times, a responsible staff member actively on duty in the facility, and immediately accessible to all residents, to whom residents can report injuries, symptoms of illness, or emergencies, and who is immediately responsible for assuring that appropriate action is taken promptly.

(*b*) Assistance is provided, as needed by individual residents, with routine activities of daily living including such services as help in bathing, dressing, grooming, and management of personal affairs such as shopping.

(*c*) Continuous supervision is provided for residents whose mental condition is such that their personal safety requires such supervision.

(iii) *Social services.* Services to assist residents in dealing with social and related problems are available to all residents through one or more caseworkers on the staff of the facility; and/or, in the case of recipients of assistance, through caseworkers on the staff of the assistance agency; or through other arrangements.

(iv) *Activities.* Activities are regularly available for all residents, including social and recreational activities involving active participation by the residents, entertainment of appropriate frequency and character, and opportunities for participation in community activities as possible and appropriate.

(v) *Food service.* At least three meals a day, constituting a nutritionally adequate diet, are served in one or more dining areas separate from sleeping quarters, and tray service is provided for residents temporarily unable to leave their rooms.

(vi) *Special diets.* If the facility accepts or retains individuals in need of medically prescribed special diets, the menus for such diets are planned by a professionally qualified dietitian, or are reviewed and approved by the attending physician, and the facility provides supervision of the preparation and serving of the meals and their acceptance by the resident.

(vii) *Health services.* Whether provided by the facility or from other sources, at least the following services are available to all residents:

(*a*) Immediate supervision of the facility's health services by a registered professional nurse or a licensed practical nurse employed full-time in the facility and on duty during the day shift except that, where the State recognizes and describes two or more distinct levels of institutions as intermediate care facilities such personnel are not required in any level that serves only individuals who have been determined by their physicians not to be in need of such supervision and whose need for such supervision is reviewed as indicated, and at least quarterly;

(*b*) Continuing supervision by a physician who sees the resident as needed and in no case, less often than quarterly;

(*c*) Under direction by the resident's physician and (where applicable in accordance with (d)(4)(vii)(*a*) of this section), general supervision by the nurse in charge of the facility's health services, guidance, and assistance for each resident in carrying out his personal health program to assure that preventive measures, treatments, and medications prescribed by the physician are properly carried out and recorded;

(*d*) Arrangements for services of a physician in the event of an emergency when the resident's own physician cannot be reached;

(*e*) In the presence of minor illness and for temporary periods, bedside care under direction of the resident's physician including nursing service provided by, or supervised by, a registered professional nurse or a licensed practical nurse;

(*f*) An individual health record for each resident including;

(*1*) The name, address, and telephone number of his physician;

(*2*) A record of the physician's findings and recommendations in the preadmission evaluation of the individual's condition and in subsequent reevaluations and all orders and recom-

mendations of the physician for care of the resident;

(3) All symptoms and other indications of illness or injury brought to the attention of the staff by the resident, or from other sources, including the date, time, and action taken regarding each.

(viii) *Living accommodations.* Space and furnishings provide each resident clean, comfortable, and reasonably private living accommodations with no more than four residents occupying a room, with individual storage facilities for clothing and personal articles, and with lounge, recreation and dining areas provided apart from sleeping quarters.

(ix) *Administration and management.* The direction and management of the facility are such as to assure that the services required by the residents are so organized and administered that they are, in fact, available to the residents on a regular basis and that this is accomplished efficiently and with consideration for the objective of providing necessary care within a homelike atmosphere. Staff are employed by the facility sufficient in number and competence, as determined by the appropriate State agency, to meet the requirements of the residents.

[35 FR 8990, June 10, 1970, as amended at 39 FR 2220, Jan. 17, 1974; 39 FR 8918, Mar. 7, 1974]

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Sec.

235.40 Certification of AFDC recipients for employment incentive tax credit.
235.50 State plan requirements for methods of personnel administration.
235.60 Federal financial participation (FFP) for State and local training.
235.61 Definition of terms.
235.62 State plan requirements for training programs.
235.63 Conditions for FFP.
235.64 FFP rates, and activities and costs matchable as training expenditures.
235.65 Activities and costs not matchable as training expenditures.
235.66 Sources of State funds.
235.70 Prompt notice to child support agency.
235.110 Fraud.

§ 235.40 Certification of AFDC receipients for employment incentive tax credit.

(a) Upon written request from an employer of any individual who is hired and receives wages for services performed after March 28, 1975, and before January 1, 1980, the State or local welfare agency shall, if such individual was eligible for, and was continuously receiving, financial assistance under an approved State AFDC plan during the 90-day period immediately preceding the date on which he was hired by such employer, so certify. Such certification shall be made in writing and in accordance with provisions of § 205.50 of this chapter, and only for purposes of an employer claiming a Federal welfare recipinent employment incentive tax credit under Section 401 of Pub. L. 94-12, the Tax Reduction Act of 1975, and Section 2107(d) of Pub. L. 94-455, the Tax Reform Act of 1976.

(b) The provisions of this section are applicable to both business and nonbusiness employers.

(c) The State agency shall make such reports in such form and containing such information as the Secretary may require.

(Sec. 1102, 49 Stat. 647 (42 U.S.C.1302))

[42 FR 17877, Apr. 4, 1977]

§ 235.50 State plan requirements for methods of personnel administration.

(a) A State plan for financial assistance programs under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the program in conformity with the Standards for a Merit System of Personnel Administration, 5 CFR Part 900, Subpart F, which incorporates the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, Sec. 2, 84 Stat. 1909), prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

(Secs. 2, 402, 1002, 1102, 1402, and 1602 of the Social Security Act, as amended; 74 Stat. 987 as amended, 45 Stat. 627 as amend-

80-152 O—82——10

ed, 49 Stat. 645 as amended, 49 Stat. 647 as amended, 64 Stat. 555 as amended, 76 Stat. 198 as amended; 42 U.S.C. 302, 602, 1202, 1302, 1352, and 1382 Note)

[45 FR 25398, Apr. 15, 1980]

§ 235.60 Federal financial participation (FFP) for State and local training.

Sections 235.61 through 235.66 contain (a) State plan requirements for training programs and (b) conditions for Federal financial participation (FFP) for training costs under the State plans. These sections apply to the State plans for the financial assistance programs in all jurisdictions under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29833, May 6, 1980]

§ 235.61 Definition of terms.

For purposes of §§ 235.60–235.66—

"Act" means the Social Security Act, as amended.

"A grant to an educational institution" means payments to an educational institution for services rendered under a time limited agreement between the State agency and the eligible educational institution which provides for the training of State or local agency employees or persons preparing for employment with the State or local agency.

"A training program" is the method through which the State agency carries out a plan of educational and training activities to improve the operation of its programs.

(a) *"Initial in-service training"* means a period of intensive, task-oriented training to prepare new employees to assume job responsibilities.

(b) *"Continuing training"* means an on-going program of training planned to enable employees to (1) reinforce their basic knowledge and develop the required skills for the performance of specific functions, and (2) acquire additional knowledge and skill to meet changes such as enactment of new legislation, development of new policies, or shifts in program emphasis.

(c) *"Full-time training"* means training that requires employees to be relieved of all responsibility for performance of current work to participate in a training program.

(d) *"Part-time training"* means training that allows employees to continue full time in their jobs or requires only partial reduction of work activities to participate in a training program outside of the State or local agency.

(e) *"Long-term training"* means training for eight consecutive work weeks or longer.

(f) *"Short-term training"* means training for less than eight consecutive work weeks.

"FFP or Federal financial participation" means the Federal government's share of expenditures made by a State or local agency under a training program.

"Fringe benefits" means the employer's share of premiums for industrial compensation, employee's retirement, unemployment compensation, health insurance, and similar expenses.

"Persons preparing for employment" means individuals who are not yet employed by the State or local agency, but who have received financial assistance from the State agency for training, and have made a legally binding commitment with the State or local agency for future employment under the conditions of these regulations.

"Stipend" means the basic living allowance paid to a student.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29833, May 6, 1980]

§ 235.62 State plan requirements for training programs.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must

provide for a training program for agency personnel. The training program must—

(a) Include initial in-service training for newly appointed staff, and continuing agency training opportunities to improve the operation of the program. The training program may also include short-term and long-term training at educational institutions through grants to institutions or by direct financial assistance to students enrolled in institutions who are agency employees or persons preparing for employment with the State or local agency;

(b) Be related to job duties performed or to be performed by the persons trained, and be consistent with the program objectives of the agency; and

(c) Be described in an annual training plan prepared prior to the beginning of the fiscal year. Copies of the training plan shall be made available upon request to the Regional Office of Family Assistance for review by the Federal staff.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203- 1302, 1352, 1353, 1382, and 1383)

[45 FR 29833, May 6, 1980, as amended at 46 FR 29264, June 1, 1981]

§ 235.63 Conditions for FFP.

(a) *Who may be trained.* FFP is available only for training provided personnel employed in all classes of positions, volunteers, and persons preparing for employment by the State or local agency administering the program.

(b) *When FFP is available.* FFP is available for personnel employed and persons preparing for employment by the State or local agency provided the following conditions are met, and with the following limitations:

(1) Employees in full-time, long-term training make a commitment to work in the agency for a period of time equal to the period for which financial assistance is granted. A State agency may exempt an employee from fulfilling this commitment only if failure to continue in employment is due to death, disability, employment in a financial assistance program in a public assistance agency in another State, or other emergent circumstances determined by the single State agency head to be valid for exemption;

(2) An employee retains his or her rights and benefits in the agency while on full-time, long-term training leave;

(3) Persons preparing for employment are selected by the State agency and accepted by the school;

(4) Persons preparing for employment are pursuing educational programs approved by the State agency;

(5) Persons preparing for employment are committed to work for State or local agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 2 months after training is completed;

(6) The State or local agency offers the individual preparing for employment a job upon completion of training unless precluded by merit system requirements, legislative budget cuts, position freezes, or other circumstances beyond the agency's control; and if unable to offer employment, releases the individual from his or her commitment;

(7) The State agency keeps a record of the employment of persons trained. If the persons are not employed by the State or local agency, the record specifies the reason for non-employment;

(8) The State agency evaluates the training programs; and

(9) Any recoupment of funds by the State from trainees failing to fulfill their commitment under this section shall be treated as a refund and deducted from total training costs for the purpose of determining net costs for FFP.

(c) *Grants to educational institutions.* FFP is available in payments for services rendered under grants to educational institutions provided all of the following conditions are met:

(1) Grants are made for the purpose of developing, expanding, or improving training for personnel employed by the State or local agency or prepar-

ing for employment by the State or local agency administering the program. Grants are made for an educational program (curriculum development, classroom instruction, field instruction, or any combination of these) that is directly related to the agency's program. Grants are made for not more than 3 years, but may be renewed, subject to the conditions of this section;

(2) Grants are made to educational institutions and programs that are accredited by the appropriate institutional accrediting body recognized by the U.S. Commissioner of Education. When a specialized program within the institution for which there is a specialized accrediting body is used, that program must be accredited by or have pre-accreditation status from that body. (Part 149 of this title explains the requirements and procedures for obtaining recognition as an accrediting agency or association. Lists of currently recognized accrediting bodies are published in the FEDERAL REGISTER periodically. *See also Nationally Recognized Accrediting Agencies and Associations* published by the Office of Education);

(3) The State agency has written policies establishing conditions and procedures for such grants;

(4) Each grant describes objectives in terms of how the educational program is related to the financial assistance programs and how it is designed to meet the State or local agency's manpower needs; and

(5) An evaluation of the educational program funded by each grant is made no later than the close of the second year of the grant. The evaluation shall be conducted by representatives from the educational institution and the State agency to determine whether conditions and objectives described in the grant are being met. If the educational program does not meet these conditions and objectives, payment shall be terminated no later than the close of the second year of the grant.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29834, May 6, 1980]

§ 235.64 FEP rates, and activities and costs matchable as training expenditures.

Under title I, X, XIV, or XVI (AABD) of the Act, FFP is available at the rate of 75 percent, and under title IV-A effective October 1, 1981, FFP is available at the rate of 50 percent for the following costs:

(a) Salaries, fringe benefits, travel and per diem for—

(1) Staff development personnel (including support staff) assigned full time to training functions and;

(2) Staff development personnel assigned part time to training functions to the extent time is spent performing such functions.

(b) For agency training sessions, FFP is available for—

(1) Salaries, fringe benefits, travel and per diem for employees in initial in-service training of at least one week;

(2) Travel and per diem for employees in agency training sessions away from the employee's work site, or in institutes, seminars or workshops related to the job and sponsored by professional organizations;

(3) Salaries, fringe benefits, travel and per diem for experts outside the agency engaged to develop or conduct special programs; and

(4) Costs of space, postage, teaching supplies, purchase or development of teaching material and equipment, and costs of maintaining and operating the agency library as an essential resource to the agency's training program.

(c) For training and education outside of the agency, FFP is available for—

(1) Salaries, fringe benefits, dependency allowance, travel, tuition, books, and educational supplies for employees in full-time, long-term training programs (with no assigned agency duties);

(2) Salaries, fringe benefits, travel, tuition, books, and educational supplies for employees in full-time, short-term training programs of four or more consecutive work weeks;

(3) Travel, per diem, tuition, books and educational supplies for employees in short-term training programs of less than four consecutive work weeks, or part-time training programs; and

(4) Stipends, travel, tuition, books and educational supplies for persons preparing for employment with the State or local agency.

(d) FFP is available for payments to educational institutions, as described in § 235.63(c) for salaries, fringe benefits, and travel of instructors, clerical assistance, teaching materials and equipment.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29834, May 6, 1980, as amended at 46 FR 46770, Sept. 21, 1981]

§ 235.65 Activities and costs not matchable as training expenditures.

FFP is not available for the following expenditures as training costs; however, the expenditures described in this section may be matched as administrative costs, if conditions for such matching are met:

(a) Salaries of supervisors (day-to-day supervision of staff is not a training activity); and

(b) Employment of students on a temporary basis, such as in the summertime.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29835, May 6, 1980]

§ 235.66 Sources of State funds.

(a) *Public funds.* Public funds may be considered as the State's share in claiming Federal reimbursement where the funds—

(1) Are appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under §§ 235.60–235.66;

(2) Are not used to match other Federal funds; and

(3) Are not federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(b) *Private funds.* Funds donated from private sources may be considered as the State's share in claiming Federal reimbursement only where the funds are—

(1) Transferred to the State or local agency and under its administrative control;

(2) Donated without any restriction which would require their use for the training of a particular individual or at particular facilities or institutions; and

(3) Do not revert to the donor's facility or use.

(Secs. 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603, Social Security Act as amended; 49 Stat. 620 as amended, 49 Stat. 621, as amended, 49 Stat. 627, as amended, 49 Stat. 628 as amended, 49 Stat. 645 as amended, 49 Stat. 646, as amended, 49 Stat. 647, as amended, 64 Stat. 555, as amended, 76 Stat. 198, as amended, 76 Stat. 200, as amended; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382, and 1383)

[45 FR 29835, May 6, 1980]

§ 235.70 Prompt notice to child support agency.

A State plan under title IV-A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuant to section 454(3) of the Social Security Act whenever AFDC is furnished with respect to a child who has been deserted or abandoned by a parent. Under this requirement:

(a) "Prompt notice" means written notice within two working days of the furnishing of aid including, a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. The title IV-A agency

and the child support agency may agree to provide notice immediately upon the filing of an application for assistance.

Under this definition:

(1) "Furnish" means the date on which cash is given to the family, a check or warrant is mailed to the family, a deposit is made in a bank for the family, or other similar circumstances in which an assistance payment is made to the family; and

(2) "Aid" means Aid to Families with Dependent Children, emergency assistance, or AFDC Foster Care.

(b) "A child who has been deserted or abandoned by a parent" means any child whose eligibility for AFDC is based on continued absence of a parent from the home, and includes a child born out of wedlock without regard to whether the paternity of such child has been established.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302)

[40 FR 27156, June 26, 1975]

§ 235.110 Fraud.

State plan requirements: A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act must provide:

(a) That the State agency will establish and maintain:

(1) Methods and criteria for identifying situations in which a question of fraud in the program may exist, and

(2) Procedures developed in cooperation with the State's legal authorities for referring to law enforcement officials situations in which there is valid reason to suspect that fraud has been practiced.

The definition of fraud for purposes of this section will be determined in accordance with State law.

(b) For methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

(c) For the designation of official position(s) responsible for referral of situations involving suspected fraud to the proper authorities.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302)

[36 FR 3869, Feb. 27, 1971]

PART 237—FISCAL ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

§ 237.50 Recipient count, Federal financial participation.

Pursuant to the formulas in sections 3, 403, 1003, 1118, 1121, 1403, and 1603 of the Social Security Act, it is necessary to identify expenditures that may be included in claims for Federal financial participation. The quarterly statement of expenditures and recoveries which is required for OAA, AFDC, AB, APTD, and AABD must include, as a part of the basis for computing the amount of Federal participation in such expenditures, the number of eligible recipients each month. However, where the State is making claims under section 1118 of the Act or under optional provisions for Federal sharing specified in such paragraphs no recipient count is involved. Vendor payments for medical care may not be considered if the State has a plan approved under title XIX of the Act. The procedures for determining recipient count are set forth in paragraphs (a), (b) and (c) of this section.

(a) *Adult assistance categories.* For each adult assistance category, under title I, X, XIV, or XVI, of the Act, the recipient count for any month may include:

(1) Eligible recipients who receive money payments or in whose behalf protective payments are made for that month:

Provided, That such payments are not excluded from Federal financial participation under the provisions of § 233.145(c) of this chapter; plus

(2) Other eligible recipients in whose behalf payments are made for institutional services in intermediate care facilities for that month, but only in a State which does not have in effect a plan approved under Title XIX of the Act. (See § 233.145(b)(2) of this chapter.)

(b) *AFDC category.* For the AFDC category under title IV, Part A, of the Act.

(1) The recipient count for any month may include:

(i) Eligible recipients in families which receive a money payment, plus

(ii) Eligible children in foster care not otherwise counted in whose behalf a foster care payment is made in such month, plus

(iii) Eligible recipients in families not otherwise counted in whose behalf protective or nonmedical vendor assistance payments are made for such month, not to exceed 10 percent of the total recipients counted under paragraphs (b)(1)(i) and (ii) of this section. The 10 percent limitation does not apply with respect to individuals for whom protective or nonmedical vendor payments are made pursuant to section 402(a)(19)(F) of the Act because there has been a refusal without good cause to accept employment, work or training, or with respect to individuals for whom protective or vendor payments are made pursuant to section 402(a)(26) of the Act because of the failure of the caretaker relative to assign rights to support or to cooperate in determining paternity and securing support.

Provided, That such payments are not excluded from Federal financial participation under the provisions of § 233.145(c) of this chapter.

(2) The recipient count may include all eligible children, plus the eligible relative with whom the children are living (as specified in section 406(a)(1) of the Act).

(3)(i) When at least one of the children in a family is eligible due to the incapacity of his parent in the home, the recipient count may include all eligible children, the parent, and the parent's spouse with whom the children are living, if the needs of such parent and spouse were included in computing the assistance payment.

(ii) As used in paragraph (b)(3)(i) of this section, the term "parent" means the natural or adoptive parent, or the stepparent who was ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a ceremonial or other legal marriage.

(4)(i) When at least one of the children in a family is eligible due to the unemployment of his father in the home, the recipient count may include all eligible children, the father, and his wife with whom the children are living, if the needs of such father and wife were included in computing the assistance payment.

(ii) As used in paragraph (b)(4)(i) of this section, the term "father" means the natural or adoptive father, or the stepfather who was ceremonially married to the child's natural or adoptive mother and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "wife" means an individual who is the wife of the child's own father, as defined above, by reason of a ceremonial or other legal marriage.

(5) Where there are two or more dependent children living in a place of residence with two other persons who are not married to each other and each of such other persons is a relative who has responsibility for the care and control of one or more of the dependent children, there may be two separate AFDC families for purposes of aid and recipient count, if neither of such persons is the parent of all the dependent children.

(c) Essential person: An "essential person" or other ineligible person who is living with the eligible person may not be counted as a recipient.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[38 FR 32914, Nov. 29, 1973, as amended at 40 FR 52376, Nov. 10, 1975]

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

Subpart A—Introduction

Sec.
238.01 Scope of this part.

Subpart B—Administration and Program Requirements

238.10 Agency administering the program.
238.12 Statewideness.
238.14 Establishment of a mandatory participant group.
238.16 Participant reimbursement.
238.18 Participant protection.
238.20 Participation requirements.
238.22 Sanctions.
238.24 Hearings and notices.
238.26 Chief Executive Officer.

Subpart C—Sponsor and Project Requirements

238.50 Sponsor requirements.
238.52 Project requirements.
238.54 Project assignment criteria.

Subpart D—Federal Financial Participation

238.60 Allowable administrative costs.
238.62 Expenses not matchable.
238.64 Fiscal reporting requirements.

AUTHORITY: Sec. 2307, Pub. L. 97-35; 95 Stat. 846 (42 U.S.C. 609).

SOURCE: 46 FR 46770, Sept 21, 1981, unless otherwise noted.

Subpart A—Introduction

§ 238.01 Scope of this part.

General. States may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies. Participants must be reimbursed for amounts not to exceed $25 for reasonable necessary expenses (as defined by the State) directly related to participation in the programs. Allowable costs to operate CWEP (see Subpart E) are matched by the Federal government at the AFDC administrative match level (50%).

Subpart B—Administration and Program Requirements

§ 238.10 Agency administering the program.

Each State with a plan approved under Title IV-A of the Social Security Act may establish and operate a CWEP program in accordance with the requirements in this part. If the State chooses to establish and opérate CWEP, it must administer the program through the single State agency designated in its title IV-A State plan to administer or supervise the AFDC program.

§ 238.12 Statewideness.

The State plan shall specify the geographic areas for which the State will implement CWEP. These may include all areas of the State or only certain subareas at the Agency's discretion.

§ 238.14 Establishment of a mandatory participant group.

(a) The State plan must identify the groups or categories of AFDC recipients who will be required to participate in CWEP. Under this requirement, States may require that any AFDC recipient, as a condition of eligibility for AFDC, participate in CWEP unless the individual—

(1) Meets the WIN exemption criteria under §224.20, except as provided in paragraph (b) of this section;

(2) Is both currently employed for at least 80 hours per month and earning not less than the legally established or defined minimum wage for such employment (for jobs which do not have an established minimum wage, recipients currently employed 80 hours must be exempted from CWEP regardless of wage level.);

(3) Was denied AFDC solely because the amount of his or her entitlement would have been less than $10 per month;

(b) A recipient who is exempt from WIN may nevertheless be required to participate in CWEP if—

(1) He or she was exempt due to remoteness from a work incentive project under § 224.20(b)(6); or

(2) He or she was exempt as a caretaker of a child at least three years

old, under 45 CFR 224.20(b)(8), and appropriate child care can be secured to enable participation in the CWEP project.

(c) Applicants for aid to families with dependent children may not be required to participate in CWEP.

(d) A State plan may provide for voluntary participation in CWEP projects by all, or any subgroups, of AFDC recipients who desire to do so. If the plan provides for voluntary participation, it will identify the categories of voluntary participants to whom CWEP is available and any conditions which attach to their participation.

§ 238.16 Participant reimbursement.

The State plan shall specify the amount and types of participation costs the State will reimburse to recipients. Under this requirement—

(a) Participants may not be required to use their assistance or their income or resources to pay participation costs.

(b) States must provide reimbursement for transportation and other costs that the State determines are necessary and directly related to participation in CWEP incurred by the participant. For FFP purposes, this amount shall not exceed $25 per month, per participant. (See Subpart D for FFP requirements.)

§ 238.18 Participant protection.

States may provide worker's compensation or other comparable protection for their CWEP participants. The cost of this protection shall be considered an administrative expense and matched accordingly.

§ 238.20 Participation requirements.

(a) States determine CWEP participation within broad Federal requirements:

(1) Where more than one member of an assistance unit meets the criteria, under the State's plan for participation in CWEP, the State may require that each eligible individual participate up to the maximum number of hours per month established by the State.

(2) Part-time participation in WIN and CWEP may be required where it is deemed appropriate by the State. The State plan shall specify whether part-time participation will be required and the circumstances under which it will be deemed "appropriate."

(b) The State plan must specify the maximum number of hours and the formula used to determine the mandatory hours of participation where the State specifies a lesser maximum. No individual may be required monthly to participate in CWEP more than the number of hours which would result from dividing the family's grant amount by the greater of the Federal or the applicable State minimum wage.

(c) The State must have procedures under which there is coordination between CWEP and WIN to insure that job placement will have priority over CWEP participation.

(d) Nothing in Section 409 of the Act, nor in this part shall be construed as authorizing the payment of AFDC as compensation for work performed.

§ 238.22 Sanctions.

The State plan shall provide that where a mandatory CWEP participant has been determined to have failed or refused without good cause to participate in CWEP, the sanctions specified in §224.51 (and further described in § 234.60) shall apply. Under this requirement the State plan shall specify the criteria to be used in determining whether or not there was "good cause" in refusing or failing to participate in CWEP.

§ 238.24 Hearings and notices.

The State plan shall specify that the provisions of 45 CFR 205.10, which relate to hearing and notice procedures, apply to CWEP participants.

§ 238.26 Chief Executive Officer.

The Chief Executive Officer of the State—

(a) Shall provide coordination between a CWEP and the WIN program—

(1) To insure that job placement will have priority over participation in CWEP; and

(2) To insure that individuals who are required to participate in both WIN and CWEP may not be denied aid under the State plan on the

grounds of "failure to participate" in one program if they are actively and satisfactorily participating in the other;

(b) May require that a participant who satisfactorily meets the requirements of CWEP may also be required to participate in a WIN program for the remainder of that month.

Subpart C—Sponsor and Project Requirements

§ 238.50 Sponsor requirements.

The State agency will designate a sponsor to operate each project or, at the agency's option, more than one project. Only public agencies and nonprofit organizations may be sponsors.

§ 238.52 Project requirements.

The State plan must provide that CWEP projects—

(a) Serve a useful public purpose;

(b) Do not result in the displacement of persons currently employed or the filling of established, unfilled position vacancies. This means that CWEP participants may not perform tasks which would have been undertaken by employees or which have the effect of reducing the work of employees. However, CWEP participants may perform the same type of tasks as performed by employees;

(c) Are not in any way related to political, electoral, or partisan activities;

(d) Are not in violation of applicable Federal, State or local health and safety standards; and

(e) Have not been developed in response to, or in any way associated with, the existence of a strike, lockout or other bona fide labor dispute, nor can the project violate any existing labor agreement between employees and employers.

§ 238.54 Project assignment criteria.

The State plan must provide that—

(a) Assignments to CWEP projects will be made taking into consideration to the extent possible, the prior training, proficiency, experience and skills of a participant;

(b) Participants will not be assigned to projects which require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Subpart D—Federal Financial Participation

§ 238.60 Allowable administrative costs.

Federal financial participation is available for administrative costs of the AFDC program for Community Work Experience program expenditures, when CWEP has been approved as part of the State plan under Title IV-A of the Act. Such costs include amounts paid to participants which (as identified in the State plan) are reasonably necessary and directly related to participation in CWEP not in excess of $25 per month per participant.

§ 238.62 Expenses not matchable.

FFP is not available for:

(a) Capital expenditures, or depreciation or use allowances in connection with a CWEP;

(b) The cost of making or acquiring materials or equipment in connection with participation in a CWEP project;

(c) The cost of supervision of CWEP participants; and

(d) Costs associated with the use of any facilities of the State public employment offices used to find employment opportunities for participants.

§ 238.64 Fiscal recordkeeping requirements.

To support claims for FFP, States shall identify in their accounting records all CWEP costs which represent direct payments to participants in the program. States must also identify in their monthly assistance rolls those individuals to whom participant expenditures were made during any month. The identification in the accounting records and monthly assistance rolls shall be in such form as to permit verification of the monthly direct payments to each individual participant subject to FFP.

PART 239—WORK SUPPLEMENTATION PROGRAM

Subpart A—Introduction

Sec.
239.01 Scope of this part.

Subpart B—Program Description and Administration of the Work Supplementation Program

239.10 Agency administering the program and State plan requirements.
239.12 Eligibility.
239.14 Types of jobs.
239.16 Providing or subsidizing jobs.
239.18 Conditions of employment.
239.20 Wages.
239.24 Participation in other work programs.
239.26 Hearings and notices.

Subpart C—Standards of Need and Treatment of Earned Income

239.50 Adjustment of standard of need.
239.52 Differential need standards—geographical areas.
239.54 Differential need standards—categories of recipients.
239.56 Further adjustments in amount of aid paid.
239.58 Earned income disregard.

Subpart D—Federal Financial Participation

239.80 Wage subsidies.
239.82 Ceiling.
239.84 Claiming Federal Financial Participation.

AUTHORITY: Sec. 2308, Pub. L. 97-35, 95 Stat. 848 (42 U.S.C. 614).

SOURCE: 46 FR 46772, Sept 21, 1981, unless otherwise noted.

Subpart A—Introduction

§ 239.01 Scope of this part.

Under the Work Supplementation Program States may use AFDC funds to develop and subsidize work for AFDC recipients as an alternative to aid provided to AFDC recipients. The Work Supplementation Program may be implemented notwithstanding the definitions contained in Section 406 of the Social Security Act or any other provison of law. Under this program AFDC recipients may choose, on a voluntary basis, to accept an offer of work to the extent such jobs are made available. In order to pay for the costs of developing and subsidizing these jobs, a State may reduce need standards in effect for selected categories of recipients on the basis of their ability to participate in the Work Supplementation Program. The reduction of needs standards may be made for either the entire State or for selected geographical areas. The total amount of Federal financial participation for operation of a State's Work Supplementation Program is limited as provided in Subpart D.

Subpart B—Program Description and Administration of the Work Supplementation Program

§ 239.10 Agency administering the program and State plan requirements.

States which elect to have a Work Supplementation Program shall administer the program through either (a) the agency designated to administer or supervise the administration of the State plan under section 402(a)(3) of the Act; or (b) the agency (if any) designated to administer the Community Work Experience Program under section 409 of the Act. A State choosing to implement a Work Supplementation Program shall amend its State plan in accordance with the following provisions.

§ 239.121 Eligibility.

A State shall determine who is eligible to participate in a Work Supplementation Program from among the persons who would, at the time of their placement in such program, be eligible for assistance under the State plan as in effect in May 1981, or as modified thereafter as required by Federal law.

§ 239.14 Types of jobs.

Within certain limits described herein, a State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary. The job positions which may be provided for recipients of aid must be of the following general types:

(a) A job position provided to an eligible individual by the State or local

agency administering the State plan under this part;

(b) A job position provided to an eligible individual by a public or nonprofit entity for which all or part of the wages are paid by such State or local agency; or

(c) A job position provided to an eligible individual by a proprietary entity involving the provision of child day care services for which all or part of the wages are paid by such State and local agency, but only if such entity does not claim a credit for any part of the wages paid to such eligible individual under section 40 of the Internal Revenue Code of 1954 (relating to credit for expenses of the Work Incentive Program) or section 44B of the Code (relating to credit for employment of certain new employees).

§ 239.16 Providing or subsidizing jobs.

The State agency administering this program may use whatever means such State determines are appropriate in order to provide or to subsidize jobs for participants in the Work Supplementation Program. A State may make whatever arrangements it deems appropriate with regard to the type of work provided, the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient receiving the work supplemented job, the amount of subsidy to be provided by the State or local agency and the conditions of participation.

§ 239.18 Conditions of employment.

(a) A State or local agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position under the Work Supplementation Program, or with respect to whom it provides all or part of the wages paid to such individual by another entity under this program.

(b) A State or local agency administering the program is not required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks during which they fill such position.

§ 239.20 Wages.

Participants in the Work Supplementation Program will be paid wages which shall be considered to be earned income for purposes of any provision of law.

§ 239.24 Participation in other work programs.

No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a Work Supplementation Program, from any requirement of title IV-A or title IV-C relating to work requirements.

§ 239.26 Hearings and notices.

The State plan shall specify that the provisions of 45 CFR 205.10, which relate to hearing and notice procedures, apply for purposes of the Work Supplementation Program.

Subpart C—Standards of Need and Treatment of Earned Income

§ 239.50 Adjustment of standard of need.

A State operating a Work Supplementation Program under this part may adjust the standards of need under the State plan as the State determines to be necessary and appropriate for carrying out such program. Such changes in need standards may be made notwithstanding 45 CFR 233.20.

§ 239.52 Differential need standards—geographical areas.

A State operating a Work Supplementation Program under this part may provide that the needs standards in effect in those areas of the State in which such program is in operation may be different from the needs standards in effect in the areas in which such program is not in operation.

§ 239.54 Differential need standards—categories of recipients.

A State operating a Work Supplementation Program under this part may provide that the needs standards for categories of recipients of aid may vary among such categories as the

State determines to be appropriate on the basis of ability to participate in the Work Supplementation Program.

§ 239.56 Further adjustments in amount of aid paid.

A State may make further adjustments in the amounts of aid paid under the plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State determines necessary and appropriate to further the purposes of the Work Supplementation Program.

§ 239.58 Earned income disregard.

A State operating a Work Supplementation Program under this part may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the Work Supplementation Program.

Subpart D—Federal Financial Participation

§ 239.80 Wage subsidies.

Payments by the State to individuals or to entities providing jobs for recipients under the program shall be expenditures incurred by the State for aid to families with dependent children (i.e., money payments, protective and vendor payments), except as limited by the ceiling for Federal financial participation described in this Subpart.

§ 239.82 Ceiling.

Federal funds may be paid to a State under this part with respect to expenditures incurred in operating a Work Supplementation Program. The amount subject to matching for any quarter for expenditures incurred in operating a Work Supplementation Program shall not exceed an amount equal to the difference between—

(a) The amount which would have been paid under section 403(a) of the Social Security Act to such State for such quarter under the State plan if it did not have a Work Supplementation Program in effect and had not altered its State plan accordingly, as such State plan was in effect in May 1981, or as modified thereafter as required by Federal law; and

(b) The amount paid to such State under section 403(a) of the Social Security Act for such quarter exclusive of the amount so paid for such quarter for the Work Supplementation Program.

§ 239.84 Claiming Federal financial participation.

A State must calculate the amount subject to FFP for its Work Supplementation Program and maintain records to support its claim in accordance with procedures established by the Secretary.

PART 282—DEMONSTRATION PROJECTS

Subpart A—General Policy Provisions for Section 1115(b) Projects

Sec.

282.10 Purpose of section 1115(b).
282.11 States eligible to apply.
282.12 No preclusion of other projects.
282.13 Statewide project.
282.14 Section 402(a)(19) waiver—WIN.
282.15 Section 402(a)(3) waiver—single State agency administration.
282.16 Section 402(a)(8) waiver—disregard of earned income.
282.17 Duration of demonstration projects.
282.18 Participation must be voluntary.
282.19 Duration of volunteer's participation.
282.20 If volunteer withdraws from project.

Subpart B—Policy Provisions for Public Service Employment in Section 1115(b) Projects

282.25 Acceptable types of public service employment.
282.26 Assignment of participants.
282.27 Employed worker displacement prohibited.
282.28 Health, safety, other conditions.
282.29 Workmen's compensation protection.
282.30 No resultant "unemployment."

Subpart C—Administrative Provisions for Section 1115(b) Projects

282.35 Administrative requirements.
282.36 Application.
282.37 Public notice by State.

Sec.
282.38 Public notice by Secretary.
282.39 Approval; denial.
282.40 Waiver cancellation; project termination.
282.41 Evaluation of demonstration projects.
282.42 Section 1115(b) project reports.

Subpart D—Compensation and Funding Provisions for Section 1115(b) Projects

282.46 Compensation of project volunteers.
282.47 Limitation on Federal matching in compensation to families.
282.48 Federal reimbursement to State for administrative expenses.

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302). Sec. 1115, 91 Stat. 1562 (42 U.S.C. 1315), Social Security Act, as amended.

SOURCE: 43 FR 53730, Nov. 17, 1978, unless otherwise noted.

Subpart A—General Policy Provisions for Section 1115(b) Projects

§ 282.10 Purpose of section 1115(b).

The purpose of section 1115(b) is to permit the States to achieve more efficient, effective use of public assistance funds; to reduce the dependency of public assistance recipients; and to improve the living conditions and increase the incomes of public assistance recipients. The purpose is to be achieved through a State's conducting not more than three demonstration projects, providing opportunities for public service employment, training, employment incentives, or other related activities. Participation by AFDC recipients must be voluntary.

§ 282.11 States eligible to apply.

Any State that has an approved plan under part A, title IV (AFDC), is eligible to apply for projects under section 1115(b).

§ 282.12 No preclusion of other projects.

Demonstration projects under section 1115(b) are authorized independently. Their use in a State does not preclude or limit other projects or activities approved under section 1115(a) or other provisions of the Act.

§ 282.13 Statewide project.

(a) *Limit of one statewide project.* Under section 1115(b), a State can have only three demonstration projects, only one of which may be a statewide project. A "statewide project" is one in effect in all political subdivisions of a State.

(b) *Section 402(a)(1) waiver.* If a State implements a section 1115(b) project statewide, no other 1115(b) project in the State can be statewide. A State may waive the requirements of section 402(a)(1) of the Act (relating to statewide operation) with respect to all three of its section 1115(b) projects, for the duration of the projects.

§ 282.14 Section 402(a)(19) waiver—WIN.

(a) *State waives WIN requirements.* A State may waive any or all of the requirements of section 402(a)(19) of the Act (relating to the work incentive program (WIN)) with respect to demonstration projects. Where section 402(a)(19) is waived, use WIN of funds in connection with a demonstration project under section 115(b) is prohibited.

(b) *State does not waive WIN requirements.* If a State does not waive section 402(a)(19), any person in active status under the WIN program is precluded from volunteering for or participating in a demonstration project under section 1115(b), unless the State AFDC agency has an agreement with the WIN agency defining the criteria under which persons in active WIN status may also participate as volunteers in 1115(b) projects. A person in active WIN status is a participant in a WIN component or is currently being considered for assignment to a WIN component.

§ 282.15 Section 402(a)(3) waiver—single State agency administration.

A State may waive the requirements of section 402(a)(3) of the Act (relating to administration by a single State agency) with respect to demonstration projects under section 1115(b).

§ 282.16 Section 402(a)(8) waiver—disregard of earned income.

(a) A State may waive the requirements of section 402(a)(8) of the Act (relating to disregard of earned income) with respect to individuals actively participating in demonstration projects under section 1115(b). However, no waiver of section 402(a)(8) shall permit a disregard of over one-half of the earned income of a project participant.

(b) Unless the State has waived the section 402(a)(8) earned income disregard under the authority of section 1115(b), it shall be applied to all of the compensation received by an individual for participating in a project, including the benefits payable on behalf of other members of the family as a result of the volunteer's participation (benefits to the family are also regarded as ompensation to the project volunteer).

§ 282.17 Duration of demonstration projects.

(a) *Two-year limit.* A State may not conduct any demonstration project established under section 1115(b) for longer than 2 years, or beyond September 30, 1980, whichever comes first. Evaluation of the project may continue after its ending date.

(b) *Beginning date.* A demonstration project under section 1115(b) shall begin not earlier than either (1) the date of approval by the Secretary, or (2) the 60th day after the application is submitted to the Secretary, if the Secretary has not denied the application.

§ 282.18 Participation must be voluntary.

Participation in a demonstration project under section 1115(b) by any individual receiving AFDC benefits must be voluntary.

§ 282.19 Duration of volunteer's participation.

A volunteer's participation in a demonstration project under section 1115(b) may last for the life of the project (see § 282.17). A State's plan may provide for shorter periods of participation so that more volunteers may be given opportunities to participate.

§ 282.20 If volunteer withdraws from project.

A volunteer may withdraw from a project at any time. If the person does, eligibility for assistance remains protected. The State shall make adjustments so that the AFDC grant to the family will be paid as assistance rather than as compensation for participation in a project, starting with the date of withdrawal from the project.

Subpart B—Policy Provisions for Public Service Employment in Section 1115(b) Projects

§ 282.25 Acceptable types of public service employment.

(a) *Public service employment generally.* Demonstration projects under section 1115(b) may provide for public service employment. The following requirements apply:

(1) The job provided must meet public service needs not met or not adequately met prior to the start of the project;

(2) The job provided must be likely to lead to regular, unsubsidized employment, or to opportunities for continued job training; and

(3) The project must, to the extent feasible, provide jobs in an occupational field likely to expand within the public or private sector as the rate of unemployment drops.

(b) *Who may be a public service employer.* Demonstration projects under section 1115(b) may provide employment by both public and private, nonprofit agencies or organizations. The following requirements apply with respect to private, nonprofit agencies or organizations:

(1) The private, nonprofit agency or organization must be one that provides the public with educational, health, or social services;

(2) The agency's or organization's services must be offered to the general public, and must not be primarily or exclusively for the benefit of members constituents; and

(3) The agency's or organization's services must be the best available to meet the needs of the unemployed AFDC population.

§ 282.26 Assignment of participants.

Job or training assignments shall, to the extent possible, be within reasonable commuting distance for participants.

§ 282.27 Employed worker displacement prohibited.

In public service employment under a demonstration project, placement of participants must not result in displacement of employed workers.

§ 282.28 Health, safety, other conditions.

In public service employment under a demonstration project, the State must establish and maintain appropriate standards for health, safety, and other conditions relating to work and training. No participant in any project may be trained or employed under conditions which are unsanitary or hazardous to his health or safety. If the training or employment involves an inherently dangerous occupation (e.g., fire control, law enforcement), reasonable safety practices must be observed. In any public service employment project, the conditions of work, training, education, and employment must be reasonable, taking into consideration the type of work in which participants are involved, the geographic region and the standards applied to similar jobs in that region, and the level of skill of the participant. Requirements of the Service Contract Act of 1965 (Pub. L. 89-286), sections 208(a)(5) and 703(5), regarding health and safety conditions, represent the Federal standard that must be met.

§ 282.29 Workmen's compensation protection.

In public service employment under a demonstration project, the State must see that there is appropriate workmen's compensation protection for all participants. The protection must be equivalent to that provided for regular employees doing the same or similar work in the same locality. Workmen's compensation protection would primarily cover work-related injuries. Coverage may be provided through the State's compensation agency or by a private insurance carrier.

§ 282.30 No resultant "unemployment."

A participant's employment in a demonstration project under section 1115(b) is not considered employment for purposes of any finding with respect to "unemployment" as that term is used in section 407 (Dependent Children of Unemployed Fathers).

Subpart C—Administrative Provisions for Section 1115(b) Projects

§ 282.35 Administrative requirements.

The provisions of 45 CFR Part 74, Administration of Grants, which establish uniform administrative requirements and cost principles, apply to demonstration projects under section 1115(b), with the following exceptions:

(a) The provisions of Subpart G, Matching and Cost Sharing, do not apply; and

(b) The provisions of Subpart I, Financial Reporting Requirements, do not apply.

§ 282.36 Application.

(a) *Application kit available.* Application must be made in the format prescribed by the Commissioner of Social Security. An application kit containing all the necessary forms and instructions is available from, and completed applications must be sent to: Division of Contracting and Procurement, Social Security Administration, Box 7696, Gwynn Oak Branch, Baltimore, Md. 21207.

(b) *Incomplete applications.* A completed application is a written proposal for a demonstration project, signed by an authorized State official, and substantially in the format prescribed by the Commissioner. Only completed applications will be considered by the Secretary. The 60-day time period during which the Secretary may deny an application will not start until a completed application has been submitted.

§ 282.37 Public notice by State.

(a) *Publication and comments.* When a State submits an application to the Secretary for a section 1115(b) project, at the same time the State

shall issue public notice that it has made application. The public notice must include a general description of the proposed demonstration project. The State shall invite comment from interested parties, which may be submitted to the State or to the Secretary within the 30-day period starting with the date the application is submitted to the Secretary.

(b) *Public inspection of application.* The State shall make copies of the application available for public inspection.

§ 282.38 Public notice by the Secretary.

(a) *Publication and comments.* The Secretary shall immediately upon receipt of an application publish a summary of the proposed demonstration project in the FEDERAL REGISTER. The Secretary will consider comments received from the public regarding the application.

(b) *Public inspection of applications.* The Secretary will make copies of the application available for public inspection at the Department of Health and Human Services. They may be inspected at this address: Family Assistance Studies Staff, Office of Research and Statistics, Social Security Administration, Room 914, 1875 Connecticut Avenue NW., Washington, D.C. 20009.

§ 282.39 Approval; denial.

(a) *Approval by the Secretary.* A State can proceed with a demonstration project under section 1115(b) when the State's application has been approved by the Secretary. The Secretary may not approve an application earlier than 30 days following the date the application is submitted to him. (Note that this coincides with the 30-day public comment period; see § 282.37.)

(b) *Denial by the Secretary.* A State can proceed with a demonstration project under section 1115(b) 60 days after the date on which the application is submitted to the Secretary, unless, during that 60-day period, the Secretary denies the application.

§ 282.40 Waiver cancellation; project termination.

The Secretary may review any waiver made by a State at any time during the life of the project. If the Secretary finds that any waiver made by a State is inconsistent with the purposes of section 1115(b) and the purposes of the AFDC program, the Secretary may disapprove the waiver. If the Secretary disapproves a waiver, and specifies that the project shall be terminated, the State must terminate the project no later than the last day of the month following the month in which the Secretary disapproved the State's waiver.

§ 282.41 Evaluation of demonstration projects.

Each project must include an evaluation component. Instructions for conducting an objective evaluation of a demonstration project are included in the application kit, and minimum Federal requirements for evaluation are set forth in the kit. An evaluation plan may go beyond the uniform Federal minimum requirements.

§ 282.42 Section 1115(b) project reports.

The State shall submit reports as prescribed by the Commissioner, for all project funds, including the non-Federal share.

Subpart D—Compensation and Funding Provisions for Section 1115(b) Projects

§ 282.46 Compensation of project volunteers.

(a) *Compensation defined.* AFDC assistance benefits paid to a family because of work performed in a public service assignment by one of its members shall be considered compensation for work performed. Additional amounts paid to the family by the State for work performed in a public service assignment shall also be regarded as compensation for work performed.

(b) *Level of compensation.* Each participant in a public service employment project must be compensated for work at an hourly rate equal to the

80-152 O—82——11

prevailing entry level hourly wage for similar work in the same locality.

(c) *State use of other funds for compensation.* A State may include use of supplementary funds as part of its project plan.

(1) A State may use funds appropriated under the State and Local Fiscal Assistance Act (SLFAA) of 1972 for any fiscal year in which the project is conducted, to cover costs of salaries of participants in public service employment not covered by AFDC funds. A State may use other State or Federal funds, in the absence of any statutory or regulatory prohibition, to augment AFDC and SLFAA funds used for demonstration projects.

(2) Supplementary funds may be used to bring participant's salaries above the AFDC benefit level; to compensate participants for work-related expenses, including reasonable child care expenses; and for other purposes consistent with section 1115(b).

§ 282.47 Limitation on Federal matching in compensation to families.

Federal matching in amounts paid to a family which includes a member participating in a project may not be increased over the Federal matching which would be payable if the family were receiving AFDC and one of its members were not working in a project. States may supplement AFDC assistance above the family's grant level where a family member participates in service employment (e.g., to provide compensation under § 282.46 or for work related expenses) by using other Federal or State funds, including funds under the State and Local Fiscal Assistance Act; however, these supplementary amounts will not be eligible for matching under title IV-A of the Social Security Act.

EXAMPLE

Assume that a family with no other income receives a $300 monthly AFDC grant before one of the family member participates in a project. The Federal matching in this assistance payment is $150. As a result of a member's participation in a public service employment project conducted under section 1115(b) of the Act, the family's AFDC grant of $300 per month is now regarded as compensation, i.e., wages. Federal matching in this payment is still $150. Since this payment is regarded as compensation for work performed, the family is entitled to have the earned income disregard ($30 plus ⅓ of the remainder, assuming it is not waived as described in § 282.16) and work expenses (e.g., $70.00) deducted from this amount in determining countable income. When the $120 earned income disregard and work expenses of $70 are deducted, countable income is $110. Under the State's methodology for determining the amount of the AFDC grant, the family would be entitled to an additional assistance payment of $190 above the $300 received in compensation for participating in the project.

Nevertheless, because of the statutory limitation in section 1115(b)(4), no additional Federal matching is available in this $190 assistance payment since $150 in Federal matching is all that would have been available if the family were not participating in the project, and this amount will be paid to the State as partial reimbursement for the $300 paid to the family as compensation.

§ 282.48 Federal reimbursement to State for administrative expenses.

A State may be reimbursed for administrative costs of a demonstration project under section 1115(b), under the rules and at the rates that generally apply to administrative costs. Federal matching for administrative costs is not limited to the amounts payable to the State in absence of a section 1115(b) project.

PARTS 283—299 [RESERVED]

CHAPTER III—OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), DEPARTMENT OF HEALTH AND HUMAN SERVICES

NOTE: Nomenclature changes affecting Chapter III appear at 45 FR 53806, Aug. 13, 1980.

Part		*Page*
300	[Reserved]	
301	State plan approval and grant procedures	154
302	State plan requirements	157
303	Standards for program operations	172
304	Federal financial participation	178
305	Audit and penalty	186
306	Medical support enforcement	193
307-399	[Reserved]	

PART 300—[RESERVED]

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

Sec.
301.0 Scope and applicability of this part.
301.1 General definitions.
301.10 State plan.
301.11 State plan; format.
301.12 Submittal of State plan for Governor's review.
301.13 Approval of State plans and amendments.
301.14 Administrative review of certain administrative decisions.
301.15 Grants.

AUTHORITY: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

SOURCE: 40 FR 27157, June 26, 1975, unless otherwise noted.

§ 301.0 Scope and applicability of this part.

This part deals with the administration of title IV-D of the Social Security Act by the Federal Government including actions on the State plan and amendments thereto and review of such actions; grants under the approved plan; review and audit of State and local expenditures; and reconsideration of disallowances of expenditures for Federal financial participation.

§ 301.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

(a) "Act" means the Social Security Act, and the title referred to is title IV-D of that Act;

(b) "Department" means the Department of Health and Human Services;

(c) "Director" means the Director, Office of Child Support Enforcement, who is the Secretary's designee to administer the Child Support Enforcement program under title IV-D;

(d) "Secretary" means the Secretary of Health and Human Services;

(e) "Office" means the Office of Child Support Enforcement which is the separate organizational unit within the Department with the responsibility for the administration of the program under this title;

(f) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(g) "IV-D Agency" means the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act;

(h) The terms "Regional Office" and "Central Office" refer to the Regional Offices and the central office of the Office of Child Support Enforcement, respectively;

(i) The "State plan" means the State plan for child support under section 454 of the Act;

(j) "Federal PLS" means the Parent Locator Service operated by the Office of Child Support Enforcement pursuant to section 452(a)(9) of the Act.

(k) "State PLS" means the service established by the IV-D agency pursuant to section 454(8) of the Act to locate absent parents.

[40 FR 27157, June 26, 1975; 40 FR 29723, July 15, 1975]

§ 301.10 State plan.

The State plan is a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in title IV-D, the regulations in Subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Office to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

§ 301.11 State plan; format.

The State plan must be submitted to the Office in the format and containing the information prescribed by the Office, and within time limits set in implementing instructions issued by the Office. Such time limits will be adequate for proper preparation of plans and submittal in accordance with the requirements for State Governors' review (see § 301.12 of this chapter).

§ 301.12 Submittal of State plan for Governor's review.

The State plan must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Office with the documents.

§ 301.13 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover its Child Support Enforcement program under title IV-D of the Act. After approval of the original plan by the Office, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Office may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 301.12, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* The Office of Child Support Enforcement in the regional offices is responsible for review of State plans and amendments. It also initiates discussion with the IV-D agency on clarification of significant aspects of the plan which come to its attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the Office of Child Support Enforcement in the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the IV-D agency.

(c) *Action.* The Regional Office exercises delegated authority to take affirmative action on the State plan and amendments thereto on the basis of policy statements or precedents previously approved by the Director. The Director retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Director with the Secretary. The Regional Office or the Director formally notifies the IV-D agency of the actions taken on the State plan or revisions thereto.

(d) *Basis for approval.* Determinations as to whether the State plan (including plan amendments and administrative practice under the plan) originally meets or continues to meet the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of the State plan.* The determination as to whether the State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Office has secured from the IV-D agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendments be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the Regional Office with respect to an amendment that has been received in such office,

unless the Regional Commissioner has secured from the State agency a written agreement to extend that period.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

§ 301.14 Administrative review of certain administrative decisions.

Any State dissatisfied with a determination of the Director pursuant to § 301.13 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Office asking the Director for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Director shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Director and the State agree in writing on another time. The hearing procedures contained in 45 CFR Part 213 applicable to § 201.4 of this title shall apply to reconsiderations brought under this section. A determination affirming, modifying, or reversing the Director's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Director described in such § 301.1 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Director subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

§ 301.15 Grants.

To States with approved plans, a grant is made each quarter for expenditures under the plan for the administration of the Child Support Enforcement program. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the IV-D agency containing information required under the Act and such other pertinent facts as may be found necessary.

(a) *Form and manner of submittal—*(1) *Time and place.* An estimate for a grant for each quarterly period must be forwarded to the Regional Office 45 days prior to the period of the estimate. It includes a certification of State funds and a justification statement in support of the estimate. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health and Human Services, Social and Rehabilitation Service, Attention: Finance Division, Washington, D.C. 20201, not later than 30 days after the end of the quarter.

(2) *Description of forms.* "State Agency Expenditure Projection—Quarterly Projection by Program" represents the IV-D agency's estimate of the total amount and the Federal share of expenditures for the administration of the title IV-D program for the quarter. From this estimate the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the IV-D agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the

amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The IV-D agency must also submit a quarterly statement of expenditures for the title IV-D program. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the IV-D agency or have been revealed in the course of an audit.

(b) *Review.* The State's estimate is analyzed by the regional office and is forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the IV-D agency to draw the amount of the grant award as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A notice of the amount of the grant award is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations. (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 FR 10201). The HHS "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

(e) *General administrative requirements.* With the following exceptions, the provisions of Part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to States under this part:

45 CFR PART 74

Subpart G Matching and Cost Sharing.
Subpart I Financial Reporting Requirements.

PART 302—STATE PLAN REQUIREMENTS

Sec.

302.0 Scope of this part.
302.1 Definitions.
302.10 Statewide operations.
302.11 State financial participation.
302.12 Single and separate organizational unit.
302.13 Plan amendments.
302.14 Fiscal policies and accountability.
302.15 Reports and maintenance of records.
302.16 Cost allocation.
302.17 Inclusion of State statutes.
302.18 Safeguarding information.
302.19 Bonding of employees.
302.20 Separation of cash handling and accounting functions.
302.31 Establishing paternity and securing support.
302.32 Child support payments to the IV-D agency.
302.33 Individuals not otherwise eligible for paternity and child support services.
302.34 Cooperative arrangements.
302.35 State parent locator service.
302.36 Cooperation with other States.
302.37 Distribution of child support payments.
302.38 Payments to the family.
302.39 Standards for program operation.
302.40 Operation of the Child Support Enforcement Program in the absence of an assignment.
302.50 Support obligations.
302.51 Distribution of child support collections.

Sec.

302.52 Incentive payments to States and political subdivisions.
302.53 Formula for determining the amount of the obligation.
302.70 Requests for information from the Federal Parent Locator Service (PLS).
302.71 Requests for collection by the Secretary of the Treasury.
302.72 Applications to use the courts of the United States to enforce court orders.
302.80 Medical support enforcement.
302.85 Computerized child support enforcement systems eligible for 90 percent FFP.

AUTHORITY: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302, unless otherwise noted.

SOURCE: 40 FR 27159, June 26, 1975, unless otherwise noted.

§ 302.0 Scope of this part.

This part defines the State plan provisions required for an approved plan under title IV-D of the Act.

§ 302.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 302.10 Statewide operations.

The State plan shall provide that:

(a) It will be in operation on a statewide basis in accordance with equitable standards for administration that are mandatory throughout the State;

(b) If administered by a political subdivision of the State, the plan will be mandatory on such political subdivision;

(c) The IV-D agency will assure that the plan is continuously in operation in all appropriate offices or agencies through:

(1) Methods for informing staff of State policies, standards, procedures and instructions; and

(2) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

§ 302.11 State financial participation.

The State plan shall provide that the State will participate financially in the program.

§ 302.12 Single and separate organizational unit.

(a) The State plan shall provide for the establishment or designation of a single and separate organizational unit to administer the IV-D plan. Such unit is referred to as the IV-D agency. Under this requirement:

(1) The IV-D agency may be:

(i) Located in the single State agency designated pursuant to § 205.100 to administer title IV-A of the Act;

(ii) Located in any other agency of the State; or,

(iii) Established as a new agency of the State.

(2) The IV-D agency shall be responsible and accountable for the operation of the IV-D program. Except as provided in § 303.20 of this Part, the agency need not perform all the functions of the IV-D program so long as it insures that all these functions are being carried out properly, efficiently, and effectively;

(3) If the IV-D agency delegates any of the functions of the IV-D program to any other State or local agency or official, or any official with whom a cooperative agreement as described in § 302.34 has been entered into or purchases services from any person or private agency pursuant to § 304.22 of this Part, the IV-D agency shall have responsibility for securing compliance with the requirements of the State plan by such agency or officials.

(b) The State plan shall describe the structure of the IV-D agency and the distribution of responsibilities among the major divisions within the unit, and if it is located within another agency, show its place in such agency. If any of the IV-D program functions are to be performed outside of the IV-D agency then these functions shall be listed with the name of the organization responsible for performing them.

§ 302.13 Plan amendments.

(a) The State plan shall provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy of IV-D agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

§ 302.14 Fiscal policies and accountability.

The State plan shall provide that the IV-D agency, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with applicable Federal requirements. The retention and custodial requirements for these records are prescribed in 45 CFR Part 74.

§ 302.15 Reports and maintenance of records.

(a) The State plan shall provide that:

(1) The IV-D agency will maintain records necessary for the proper and efficient operation of the plan, including records regarding:

(i) Applications pursuant to § 302.33 for child support services available under the State plan;

(ii) Location of absent parents, actions to establish paternity and obtain and enforce child support, and the costs incurred in such actions;

(iii) Amount and sources of child support collections and the distribution of these collections;

(iv) Any fees charged or paid for child support enforcement services;

(v) Any other administrative costs;

(vi) Any other information required by the Office; and

(vii) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

The retention and custodial requirements for these records are prescribed in 45 CFR Part 74.

(2) The IV-D agency will make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports.

(b) *Conditions for optional use of microfilm copies.* Certified microfilm copies of the substantiating documents required for Federal audit and review purposes may be substituted for the originals (i.e., the originals may be destroyed), provided that:

(1) The IV-D agency can show, on the basis of a study of its record storage situation, that the use of microfilm copies is in the interest of efficiency and economy;

(2) The proposed microfilm system is adequate:

(i) To enable the IV-D agency to discharge its own audit responsibility for propriety of expenditures for which Federal financial participation is claimed and in no way hinders the IV-D agency's supervision and control of the programs; and

(ii) To enable the HHS Audit Agency and the Office to properly discharge their respective responsibilities for reviewing the manner in which all aspects of the Child Support Enforcement program are being administered in the State; and

(3) Prior approval is obtained from the regional office indicating that the system meets the conditions in paragraph (b)(2) of this section and that the proposed microfilming procedures are reliable and are supported by an adequate retrieval system.

§ 302.16 Cost allocation.

(a) The State plan shall provide that:

(1) The IV-D agency will claim Federal financial participation in those costs of administration which require an allocation method only if the agency has and approved cost allocation plan on file with the Regional Office which identifies and describes the methods and procedures the State has established for properly charging the costs of administration, services, (excluding purchased services), and training activities under the plan in accordance with the Federal requirements set out in 45 CFR Part 74, Appendix C, and in Department and Office regulations and instructions.

(2) The cost allocation plan includes description of the functions and activities by organizational units or other cost centers prescribed in the State plan; estimated costs for an annual period by organizational units or other cost centers (unless specifically waived by the Regional Office); and the basis used for allocating the various pools of costs to programs and activities (with justification for each).

(3) The cost allocation plan contains such other information as is necessary to document the validity of the cost allocation methods and procedures and must include methods and procedures for:

(i) Allocating all such administrative costs of the State Department in which the IV-D agency is located between Federal and non-Federal programs;

(ii) Identifying, of the costs applicable to more than one of the Federal programs, those applicable to each of the separate programs, in accordance with program classifications specified by the Secretary; and

(iii) Segregating costs in paragraph (a)(3)(ii) of this section by classifications as are found necessary by the Secretary.

(4) The estimated costs are included solely to permit evaluation of the methods of allocation, and therefore approval of the cost allocation plan shall not constitute approval of these estimated costs for use in calculating claims for Federal financial participation.

(5) A State shall revise its cost allocation plan when the allocation method shown in the existing plan is outdated due to organizational changes within the IV-D agency, changes in Federal law or regulations, or other similar changes.

(b) *Federal financial participation.* (1) If a IV-D agency fails to revise its cost allocation plan as required by paragraph (a)(5) of this section within the quarter that such changes are effective, the Regional Office will defer payment of any overstated portions of the expenditures which he determines to result from the IV-D agency using an outdated cost allocation method until the IV-D agency has submitted a revised cost allocation plan which is approved by him and the IV-D agency has revised its claim accordingly.

(2) If a IV-D agency does not have any cost allocation plan on file with the Regional Office, payment will not be made for those costs of administration which require an allocation method. Such payments will be deferred until such time as a cost allocation plan has been submitted and is approved by the Regional Office.

[40 FR 57672, Dec. 11, 1975]

§ 302.17 Inclusion of State statutes.

The State plan shall provide a copy of State statutes, or regulations promulgated pursuant to such statutes and having the force of law (including citations of such statutes and regulations), that provide procedures to be used in the determination of paternity of a child born out of wedlock, and to establish the child support obligation of a responsible parent, and to enforce such child support obligations.

§ 302.18 Safeguarding information.

The State plan shall provide that:

(a) Pursuant to State statute which imposes legal sanctions, the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with:

(1) The administration of the plan or program approved under Parts A, B, C or D of title IV or under titles II, X, XIV, XVI, XIX or XX or the supplemental security income program established under title XVI.

(2) Any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and

(3) The administration of any other Federal or Federally assisted program which provides assistance, in cash or inkind, or services, directly to individuals on the basis of need;

(b) These safeguards shall also prohibit disclosure to any committee or legislative body (Federal, State, or local) of any information that identifies by name or address any such applicant or recipient.

[40 FR 52377, Nov. 10, 1975]

§ 302.19 Bonding of employees.

The State plan shall provide that the following requirements and criteria to bond employees are in effect.

(a) *IV-D responsibility.* The IV-D agency will insure that every person, who has access to or control over funds collected under the child support enforcement program, is covered by a bond against loss resulting from employee dishonesty.

(b) *Scope.* The requirement in paragraph (a) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles or has access to child support collections, which includes:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Bond.* The bond will be for an amount which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty.

(d) *Self-bonding System.* A State or political subdivision may comply with the requirement in paragraph (a) of this section:

(1) By means of a self-bonding system established under State law or,

(2) In the case of a political subdivision, by means of a self-bonding system approved by the State IV-D agency.

(e) *IV-D liability.* The requirements of this section do not reduce or limit the ultimate liability of the IV-D agency for losses of child support collections from the State's IV-D program.

[44 FR 28803, May 17, 1979; 44 FR 45137, Aug. 1, 1979]

§ 302.20 Separation of cash handling and accounting functions.

The State plan shall provide that the following requirements and criteria to separate the cash handling and accounting functions are in effect.

(a) *IV-D responsibility.* The IV-D agency will maintain methods of administration designed to assure that persons responsible for handling cash receipts of child support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of child support receipts. Such methods of administration shall follow generally recognized accounting standards.

(b) *Scope.* The requirement in paragraph (a) of this section applies to persons who participate in the collection, accounting or operating functions which include:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Exception.* The Regional Office may grant a waiver to sparsely populated geographical areas, where the requirements in paragraph (a) of this section would necessitate the hiring of unreasonable numbers of additional staff. The IV-D agency must document such administrative infeasibility and provide an alternative system of controls that reasonably insures that child support collections will not be misused.

[44 FR 28803, May 17, 1979]

§ 302.31 Establishing and paternity securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

(1) In the case of a child born out of wedlock with respect to whom an assignment under § 232.11 of this title is effective, to establish the paternity of such child; and

(2) In the case of any child with respect to whom such assignment is effective, to secure support for such child from any person who is legally liable for such support, utilizing reciprocal arrangements adopted with other States when appropriate; and

(b)(1) The IV-D agency will not undertake to establish paternity or secure child support in any case for which it has received notice from the IV-A agency that there has been a finding of good cause under §§ 232.40 through 232.49 of this title except as provided in paragraph (c) of this section.

(2) Upon receiving notice from the IV-A agency that an applicant or recipient has claimed good cause, the IV-D agency will suspend all activities to establish paternity or secure child support until notified of a final determination by the IV-A agency.

(c) The IV-D agency will not undertake to establish paternity or secure child support if there has been a finding of good cause pursuant to §§ 232.40 through 232.49 of this title unless there has been a determination by the State or local IV-A agency that child support enforcement may proceed without the participation of the caretaker relative. If there has been such a determination, the IV-D agency will undertake to establish paternity or secure child support but may not involve the caretaker relative in such undertaking.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[44 FR 45752, Oct. 3, 1979]

§ 302.32 Child support payments to the IV-D agency.

The State plan shall provide that:

(a) In any case in which child support payments are collected for a recipient of aid under the State's title IV-A plan with respect to whom an assignment under § 232.11 is effective, such payments shall be made to the IV-D agency and shall not be paid directly to the family except as provided in paragraph (b).

(b) As soon as possible but not later than 30 days after the end of a month, the IV-D agency will inform the agency administering the State's title IV-A plan of the amount of the collection which represents payment on the required support obligation for that month as determined in § 302.51(a). Upon being informed of this amount, the IV-A agency will determine if such amount is sufficient to make the family ineligible for an assistance payment pursuant to the State's IV-A plan (See § 232.20 of Chapter II of this title). If such amount is sufficient to make the family ineligible for an assistance payment, the IV-A agency will notify the IV-D agency of such fact and the IV-D agency must pay such amount to the family in the month for which the IV-A agency had determined that the family is ineligible for an assistance payment except in those cases pursuant to § 205.10 of this title in which a family is nevertheless entitled to an assistance payment pending the result of a hearing. With such payment the IV-D agency will notify the family if it will continue to collect and distribute current support payments pursuant to § 302.51(e)(1) of this part.

(c) If the IV-A agency determines that the amount of the collection which represents payment on the required support obligation for the month does not make the family ineligible for an assistance payment, or if a hearing is requested pursuant to § 205.10 of this title, the IV-A agency will notify the IV-D agency of such fact and the IV-D agency will distribute such amount pursuant to § 302.51 of this part.

(d) To the extent any amount collected in a month includes payment on required support obligations for past months, that portion of such amount will be distributed by the IV-D agency pursuant to § 302.51(b) (4) and (5) of this part.

(e) Child support collected in a month after any month in which the child support collected makes the family ineligible for an assistance payment (pursuant to § 232.20 of this title) but prior to or in the month in which the family receives its last assistance payment, shall be used to reimburse the State for any assistance paid in such months with any excess being paid to the family. This provision will not apply when a hearing is requested pursuant to § 205.10 of this title. In these cases, when the hearing results in a determination that the family was ineligible for an assistance payment, the IV-D agency will determine the amount by which the entire child support collection for a month that the family would have received

pursuant to paragraph (b) of this section exceeds the amount the family actually received for a month as an assistance payment and pursuant to § 302.51. Such excess shall be paid to the family. If the family is determined to be eligible, distribution will continue to be made pursuant to § 302.51.

§ 302.33 Individuals not otherwise eligible for paternity and child support services.

(a) The State plan shall provide that the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the IV-D agency.

(b) The State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(1) A flat dollar amount not to exceed $20 to be charged each applicant; or,

(2) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(c) The State plan may provide for recovery of any costs incurred in excess of the application fee in collection of child support. If the State elects to recover such costs they shall be deducted from the amount of such recovery. In a particular case, large initial costs of establishing paternity or collecting child support may be prorated over a period of months for purposes of recovering such costs. If the State elects to recover costs under this paragraph, the individual for whom child support services are provided shall be informed of such fact.

(d) The IV-D agency may take an assignment of support rights from an individual applying for paternity or child support services under this section. However, such assignment shall not constitute an assignment for purposes of § 232.11 of this title and may not be a condition of receipt of such services.

§ 302.34 Cooperative arrangements.

The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law-enforcement officials. Such agreements may be entered into with a single official covering more than one court, official, or agency, if such single official has the legal authority to enter into agreements on behalf of such courts, officials, or agencies. Such agreements shall contain provisions for providing courts and law-enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law-enforcement official, to the extent that such information is relevant to the duties to be performed pursuant to the agreement. They shall also provide for assistance to the IV-D agency in carrying out the program, and may relate to any other matters of common concern. Under this requirement such agreements may include provisions:

(a) For the investigation and prosecution of fraud directly related to paternity and child support;

(b) To reimburse courts and law-enforcement officials for their assistance.

§ 302.35 State parent locator service.

The State plan shall provide that:

(a) The IV-D agency will establish a parent locator service utilizing:

(1) All sources of information and records available in the State, and in other States as appropriate; and

(2) The Federal PLS of the Department of Health and Human Services.

(b) The State PLS will have a central State office and may also establish or designate offices at the local level.

(c) The IV-D agency will accept applications to utilize the Federal PLS from:

(1) Any State or local agency or official seeking to collect child support or

medical support obligations under the State plan.

(2) A court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agency of such court; or

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving aid under title IV-A of the act.

However, prior to the submission of any request to the Federal PLS, pursuant to (c)(3), the State PLS must first make diligent and reasonable efforts to locate the absent parent.

(d) Any requests to the Federal PLS under section 453 of the act will be submitted by the central State office in accordance with the manner and form prescribed by the Secretary. The IV-D agency may also designate a maximum of two additional IV-D offices within the State to submit such requests. These requests must be submitted in the same mode as the central office of the State PLS submits requests to the Federal PLS unless the mode used is approved by OCSE.

(e) The IV-D agency will collect or pay the fee which is required by section 453(e)(2) of the Act to be charged the individuals described in paragraph (c)(3) of this section.

(Secs. 1102, 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k))

[43 FR 33248, July 31, 1978, as amended at 45 FR 8987, Feb. 11, 1980]

§ 302.36 Cooperation with other States.

The State plan shall provide that the State will cooperate with any other State:

(a) In establishing paternity, if necessary;

(b) In locating an absent parent who is present in the State and against whom any action is being taken under a IV-D program in any other State;

(c) In securing compliance by an absent parent who is present in the State with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan approved under title IV-A of the Social Security Act in any other State; and,

(d) In carrying out any other function required under a plan approved under title IV-D.

§ 302.37 Distribution of child support payments.

The State plan shall provide that, pursuant to the requirements of § 302.32 of this part, amounts collected as child support will be distributed as provided in § 302.51.

§ 302.38 Payments to the family.

The State plan shall provide that any payment required to be made under §§ 302.32 and 302.51 of this part to a family will be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children.

§ 302.39 Standards for program operation.

The State plan shall provide that the IV-D agency will comply with the standards for program operation and the organizational and staffing requirements prescribed by Part 303 of this chapter.

[41 FR 55348, Dec. 20, 1976]

§ 302.40 Operation of the Child Support Enforcement Program in the absence of an assignment.

(a) In the case of any State the law of which on August 1, 1975 met the requirements of 45 CFR 232.11(a)(1), with respect to those recipients of assistance who continue to be eligible for assistance in the absence of an assignment pursuant to 45 CFR 232.11(a)(4), the provisions of §§ 302.31, 302.32, 302.51, and 302.52 shall apply as if there were an assignment in effect pursuant to 45 CFR 232.11.

(b) Section (a) of this section remains in effect until December 31, 1975, and as of the close of business on that date it is repealed.

[40 FR 52377, Nov. 10, 1975]

§ 302.50 Support obligations.

The State plan shall provide as follows:

(a) The support rights assigned to the IV-D agency pursuant to § 232.11

of this title constitute an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction,

(2) Other legal process as established by State laws, such as an administrative hearing process or a legally enforceable and binding agreement; or,

(3) For cases receiving child support services under the provisions of section 402(a) (17) and (18) of the Act prior to July 1, 1975, the obligation may be that established by an agreement which was entered into prior to July 1, 1975 which does not meet the requirement of paragraph (a)(2) of this section. In the event of a breach of the agreement, such agreement must be superseded pursuant to paragraph (a) (1) or (2) of this section as soon as possible. All agreements not meeting the requirements of paragraph (a)(2) of this section must be superseded pursuant to paragraph (a) (1) or (2) of this section on the basis of one-third by January 1, 1976, two-thirds by July 1, 1976, and all by January 1, 1977;

(b) The amount of the obligation described in paragraph (a) of this section shall be:

(1) The amount specified in the order of a court of competent jurisdiction which covers the assigned support rights; or

(2) If there is no court order, an amount determined in writing by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with a formula which meets the criteria prescribed in § 302.53.

(c) The obligation described in paragraph (a) of this section shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section.

(e) No portion of any amounts collected which represent a support obligation assigned under § 232.11 of this title may be used to satisfy a medical support obligation unless the court or administrative order requires a specific amount for medical support.

(Secs. 1102, 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k))

[40 FR 27159, June 26, 1975, as amended at 45 FR 8987, Feb. 11, 1980]

§ 302.51 Distribution of child support collections.

The State plan shall provide as follows:

(a) For the purposes of distribution under this section, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. (The IV-D agency may if it so desires round off the converted amount to whole dollar amounts for the purposes of distribution under this section and § 302.52). The date of collection shall be the date on which the payment is received by the IV-D agency or the legal entity of the State or political subdivision actually making the collection on behalf of the IV-D agency. For purposes of interstate collections, the date of collection shall be the date on which the payment is received by the IV-D agency of the State in which the family is receiving aid.

(b) The amounts collected as support by the IV-D agency pursuant to the State plan for children who are current recipients of aid under the State's title IV-A plan and for whom an assignment under § 232.11 of this title is effective shall be distributed as follows:

(1) Of any amount that is collected in a month which represents payment on the required support obligation for that month, 40 percent of the first $50 of such amount shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section. If the amount collected

includes payment on the required support obligation for a previous month or months, the family shall only receive 40 percent of the first $50 of the amount which represents the required support obligation for the month in which the support was collected. If amounts are collected for one family which represents support payments from two or more absent parents, only 40 percent of the first $50 of the amount collected which represents the total required support obligation for the month in which the support was collected shall be paid to the family under this paragraph. No payment shall be made to a family under this paragraph for a month in which there is no child support collection. The requirements of this paragraph shall not be applicable after September 30, 1976.

(2) Any amount that is collected in a month which represents payment on the required support obligation for that month (and, prior to October 1, 1976, is in excess of the amount paid to the family under paragraph (b)(1) of this section) shall be retained by the State to reimburse, in whole or in part, the assistance payment for the month in which the child support was collected or the next month. Of the amount retained by the State as reimbursement for that month's assistance payment, the IV-D agency shall determine the Federal Government's share of the amount so retained so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payment. From the Federal government's share, the IV-D agency shall deduct and pay the incentive payments, if any, prescribed in § 302.52.

(3) If the amount collected is in excess of the amount required to be distributed under paragraphs (b) (1) and (2) of this section, the family shall be paid such excess up to the difference between the assistance payment for the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV-A plan (see § 302.32) and the court ordered amount for that month. This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV-A plan. If such court ordered amount is less than such assistance payment, no amount shall be paid to the family under this paragraph. In cases in which there is no court order, the family shall not be paid any amount under this paragraph.

(4) If the amount collected is in excess of the amounts required to be distributed under paragraphs (b) (1)-(3) of this section, any such excess shall be retained by the State as reimbursement for past assistance payments made to the family for which the State has not been reimbursed. The State may apply the amount retained to any sequence of months for which it has not yet been reimbursed. Of the amount retained by the State as reimbursement of past assistance payments, the IV-D agency shall determine the Federal Government's share of the amounts so retained so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payments. From the Federal government's share, the IV-D agency shall deduct and pay the incentive payment, if any, prescribed in § 302.52. If past assistance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such assistance payments is the amount of such obligation, unless amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan, in which case such amounts may be retained by the State to reimburse the difference between such support obligation and such assistance payments.

(5) If the amount collected is in excess of the amounts required to be distributed under paragraphs (b)(1)-(4) of this section, such excess shall be paid to the family. This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV-A plan.

(c) If an amount collected as child support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under section 402(a)(26) of the Act for the current month and all past months.

(d) Any amount paid under paragraph (b) (1), (3) or (5) of this section shall be identified as not being an assistance payment.

(e) Whenever a family for whom child support payments have been collected and distributed under the title IV-D State plan ceases to receive assistance under the title IV-A State plan, the IV-D agency may:

(1) Continue to collect current support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under the title IV-A State plan, and pay all amounts so collected to the family; and,

(2) At the end of such three month period, if the IV-D agency is authorized to do so by the individual on whose behalf the collection will be made, continue to collect such support payments from the absent parent and pay the net amount of any amount so collected to the family after deducting any costs incurred in making the collection from the amount of any recovery made.

(f) When a family ceases receiving assistance under the State's title IV-A plan, the assignment of support rights under § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. From this accrued amount, the IV-D agency shall attempt to collect such unpaid obligation. Under this requirement:

(1) Such collections shall be used to reimburse any amounts of past assistance which have not been reimbursed under paragraph (b)(4) of this section;

(2) Of the amount collected, the IV-D agency shall determine the Federal Government's share of the collection so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payments. From the Federal Government's share the IV-D agency shall deduct and pay the incentive payment, if any, prescribed in § 302.52;

(3) Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family;

(4) For those cases in which collections are authorized under paragraph (e) of this section, priority shall be given to collection of current support.

§ 302.52 Incentive payments to States and political subdivisions.

The State plan shall provide that the IV-D agency will use the procedures and criteria set forth below in determining whether incentive payments must be made, the amount of these payments and the manner in which they are to be paid.

(a) *Eligibility for incentives.* The IV-D agency shall pay incentives to political subdivisions of the State or to another State when both of the requirements set forth below are met.

(1) The political subdivision (or a legal entity of the political subdivision, such as a Prosecuting of District Attorney or a Friend of the Court) or other State makes the enforcement and collection of the support rights assigned under § 232.11 of this title (either within or outside of the State making the enforcement and collection).

(2) The enforcement and collection of the assigned support rights are made pursuant to a State IV-D plan.

(b) *Payment of incentives.* The amount of the incentive payment shall be 15 percent of any amount collected and required to be retained to reimburse assistance payments under § 302.51(b) (2) or (4). The incentive payment shall be made out of amounts which would otherwise be paid to the Federal Government to reimburse its share of assistance payments.

(c) The jurisdiction making the collection shall transmit, no later than 10 days after the end of the month in which the collection was made, the entire amount of the collection to the

80-152 O—82——12

appropriate IV-D agency. Such IV-D agency shall calculate and pay the incentive, if any, described in paragraph (a) of this section, within 60 days after the end of the month in which the collection was made by the collecting jurisdiction.

(d) In forwarding the child support collection to the appropriated IV-D agency, the collecting jurisdiction shall include, as appropriate, either a two digit code identifying the collecting State or a five digit code identifying the collecting county. Such codes shall be those defined in the Federal Information Processing Standards Publication (FIPS) by the National Bureau of Standards and also promulgated by the General Services Administration in *Worldwide Geographical Location Codes* and shall be used by the IV-D agency to track the collection and pay the incentive.

(e) Where more than one jurisdiction within the State is involved in the enforcement or collection, or more than one State is involved in the enforcement or collection, the amount of the incentive payment determined in paragraph (a) of this section shall be allocated among such jurisdictions in a manner prescribed by instructions issued by the Office.

[40 FR 27159, June 26, 1975, as amended at 42 FR 55818, Oct. 19, 1977]

§ 302.53 Formula for determining the amount of the obligation.

The State plan shall provide as follows:

(a) There shall be a formula to be utilized by the IV-D agency in determining the amount of the support obligation pursuant to § 302.50 when there is no court order covering the obligation. Such formula must take into consideration the following criteria:

(1) All earnings, income and resources of the absent parent including real and personal property;

(2) The earnings potential of the absent parent;

(3) The reasonable necessities of the absent parent;

(4) The ability of the absent parent to borrow;

(5) The needs of the child for whom the support is sought;

(6) The amount of assistance which would be paid to the child under the full standard of need of the State's IV-A plan;

(7) The existence of other dependents; and

(8) Other reasonable criteria which the State may choose to incorporate.

(b) The formula described in paragraph (a) of this section must be designed to insure, as a minimum, that the child for whom support is sought benefits from the income and resources of the absent parent on an equitable basis in comparison with any other minor children of the absent parent.

(c) The formula described in paragraph (a) of this section shall be utilized to determine the required monthly support obligation, the amount of support obligation arrearage, if any, and the amount to be paid periodically against such arrearage.

§ 302.70 Requests for information from the Federal Parent Locator Service (PLS).

The State plan shall provide as follows:

(a) All requests for information from the Federal PLS will originate from the central office of the State PLS and the other offices, if any, designated pursuant to § 302.35(d).

(b) All requests will be on such forms and in such format as may be prescribed by the Office.

(c) Each request to the Federal PLS must contain the following information:

(1) The absent parent's name;

(2) The absent parent's social security account number (SSN). If the SSN is unknown, the IV-D agency must make every reasonable effort to ascertain the individual's SSN before submitting the request to the Federal PLS;

(3) Whether the individual is or has been a member of the armed services, if known;

(4) Whether the individual is receiving, or has received, any Federal compensation or benefits, if known; and,

(5) Any other information prescribed by the Office.

(d) All requests to the Federal PLS will be accompanied by a statement, signed by the head of the IV-D agency or his designee, attesting to the following:

(1) That request is being made to locate an individual for the purpose of establishing paternity or securing child support, and for no other purpose.

(2) That any information obtained through the Federal PLS shall be treated as confidential and shall be safeguarded pursuant to the requirements of § 302.18 of this chapter.

(3) That the IV-D agency will take protective measures to safeguard personal information transmitted and received through use of the Federal PLS.

(e) The State PLS shall collect such fee as the Office may from time to time establish for each request to the Federal PLS pursuant to § 302.35(c)(3). This fee will be collected by the Office from the IV-D agency by an offset of the quarterly awards.

[43 FR 33249, July 31, 1978]

§ 302.71 Requests for collection by the Secretary of the Treasury.

(a) The State plan shall provide that the IV-D agency may request the Secretary to certify the amount of any child support obligation assigned to the IV-D agency to the Secretary of the Treasury or his delegate for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954. Such requests shall be submitted to the Regional Office, using such forms as may be prescribed by the Office of Child Support Enforcement, signed by the head of the IV-D agency or his designee, attesting to the following:

(1) The amount of the delinquency under a court order for support, which shall not be less than the amount owed for three months and in no case less than $75, and whether such amount is in lieu of, or in addition to, any previous amounts which have been certified.

(2) There has not been a request for certification to the Secretary of the Treasury or his delegate in the case during the previous 6 months. If there has been a request for certification in the case prior to such 6 month period, the date of such request must be specified.

(3) The IV-D agency agrees to reimburse the United States for costs involved in making the collection.

(4) The IV-D agency has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms as set forth in the State plan. Under this requirement, the following must be provided:

(i) A certified copy of the court order for support;

(ii) A description of action taken under any collection mechanisms described in the State plan, including certified copies of court orders if applicable;

(iii) An explanation as to why the State collection mechanisms were not utilized, or why such mechanisms failed to collect the amount of the delinquency and why further State action would be unproductive.

(5) The reasonable belief that the delinquent support obligee possesses assets which could be levied upon by the Secretary of the Treasury or his delegate to collect the delinquency, the nature of such assets and their location, if known.

(6) Sufficient information to enable the Secretary of the Treasury or his delegate to identify and locate the delinquent support obligee including:

(i) The individual's name and social security number, if known; and,

(ii) The individual's last known address and place of employment.

(b) The Regional Office will review each request for certification to determine if the request meets the requirements of paragraph (a) of this section.

(1) If the request meets such requirements it will promptly be certified and transmitted together with a copy of the documents submitted by the State under paragraph (a) of this section, to the Secretary of the Treasury or his delegate. The IV-D agency will then be notified of such action.

(2) If the request does not meet such requirements, it will be returned to the IV-D agency with an explanation of the refusal to certify.

(c) The State plan shall provide that after a case has been certified under this section, and prior to a distribution

of the delinquent amount to the State by the Secretary of the Treasury or his delegate, any change in the status of the case that would affect the amount of the delinquency, or a change in the location or nature of the assets or address of the delinquent support obligee, shall be reported by the IV-D agency to the Regional Office. (Such information will be transmitted to the Secretary of the Treasury or his delegate by the Regional Child Support Office.)

§ 302.72 Applications to use the courts of the United States to enforce court orders.

(a) The State plan shall provide that the IV-D agency may apply to the Secretary for permission to utilize a United States district court to enforce a child support order of a court of competent jurisdiction against an absent parent who is present in another State when the IV-D agency can furnish evidence to demonstrate that:

(1) The State in which the absent parent is present has not undertaken to enforce such order against such parent within 60 days of the receipt of a request by the originating State under uniform reciprocal enforcement of support procedures or other legal processes required by § 303.7(a)(3); and,

(2) Utilization of the United States district court is the only reasonable method of enforcing such order.

(b) The State plan shall provide that such applications will be submitted to the Regional Office, using such forms as may be prescribed, signed by the head of the IV-D agency or his designee, attesting to the following:

(1) The requesting IV-D agency has undertaken to obtain the assistance of such other State to enforce such order;

(2) Such other State has failed to secure compliance with such order:

(3) The requesting IV-D agency has provided notice to the State-level central office of the IV-D agency of the other State 60 days or more after requesting the other State's assistance that it would request the Secretary to certify the case for use of a United States district court if such other State did not respond to the request for assistance within 30 days of the notice, and that an unsatisfactory response would not preclude a request to the Secretary. Copies of the original request, the notice, and any response thereto shall be furnished with the application.

(c) The Regional Office will review each application to determine if it meets the requirements of paragraphs (a) and (b) of this section. If a request meets such requirements, the case will promptly be certified for enforcement in the United States district court. If the request fails to meet such requirements, the application shall be denied and returned to the IV-D agency with an explanation of the refusal to certify.

§ 302.80 Medical support enforcement.

The State plan may provide for the IV-D agency to secure and enforce medical support obligations under a cooperative agreement between the IV-D agency and the State Medicaid agency. Cooperative agreements must comply with the requirements contained in Part 306 of this chapter.

(Secs. 1102, 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396k))

[45 FR 8987, Feb. 11, 1980]

§ 302.85 Computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* (1) "Advance planning document" or "APD"—The definition of this term found in § 95.605 of this title also applies to this section. (See § 303.65 of this chapter for specific requirements that APDs must meet for appropriate system costs to be funded at 90 percent Federal financial participation.)

(2) "Computerized child support enforcement system" means a system of software and hardware (that may have State and local components) which:

(i) Introduces, processes, accounts for and monitors data used by the child support enforcement program in carrying out activities under the State plan; and

(ii) Produces utilization and management information about child support

enforcement services as required by the State IV-D agency and Federal government for program administration and audit purposes.

(3) "Design" or "system design" means a combination of narrative and diagrams describing the structure of the computerized child support enforcement system.

(4) "Development" means the detailing of system and program specifications, programming, and testing.

(5) "Enhancement" means modifying or adding to an existing computerized child support enforcement system.

(6) "Installation" means the integrated testing of programs and subsystems, system conversion, and turnover to operational status, including pilot testing and data validation.

(7) "Operation" means the automated processing of (i) data associated with the provision of child support enforcement services and collections (including the distribution and payment of incentives) and (ii) reports on a continuous basis. Operation includes the use of supplies, software, hardware and personnel directly involved in the daily functioning of computerized child support enforcement systems.

(8) "Planning" means:

(i) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(ii) The preparation of an APD;

(iii) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(iv) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(9) "Requirements analysis" means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

(10) "Software"—The definition of this term found in § 95.605 of this title also applies to this section.

(b) *Optional State plan amendment.* The State plan may provide for the establishment of a computerized child support enforcement system funded at 90 percent Federal financial participation that meets the requirements in paragraph (c) of this section.

(c) *System requirements.* At a minimum, each State's computerized child support enforcement system established under this section must be:

(1) Planned, designed, developed, installed or enhanced in accordance with an initial and annually updated APD approved under § 303.65;

(2) Planned, designed, developed, installed or enhanced to control, account for, and monitor all the factors in the child support collection and paternity determination processes under the State plan. At a minimum this must include:

(i) Maintaining identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom child support obligations are sought to be established or enforced and on individuals to whom child support obligations are owed, and other data as required by the Office, and assuring compatibility with the systems of different jurisdictions to permit periodic screening to determine whether an individual is paying or is obligated to pay child support in more than one jurisdiction;

(ii) Periodically verifying the information on individuals referred to in paragraph (c)(2)(i) with Federal, State and local agencies, both intrastate and interstate;

(iii) Maintaining data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office;

(iv) Maintaining information pertaining to:

(A) Delinquency and enforcement activities;

(B) Intrastate, interstate and Federal location of absent parents;

(C) The establishment of paternity; and

(D) The establishment of child support obligations;

(v) Collecting and distributing both intrastate and interstate child support payments;

(vi) Determining, collecting and distributing both intrastate and interstate incentive payments;

(vii) Maintaining accounts receivable on all amounts owed, collected, and distributed;

(viii) Maintaining costs of all services rendered, either directly or by interfacing with State financial management and expenditure information;

(ix) Accepting case referrals and update information from the State's Aid to Families with Dependent Children (AFDC) program and using that information to identify and manage child support enforcement cases;

(x) Interfacing with records of the State's AFDC program in order to determine whether a collection of child support causes a change in eligibility for, or the amount of aid under, the AFDC program;

(xi) Providing security to prevent unauthorized access to, or use of, the data in the system; and

(xii) Providing management information on all IV-D cases, both AFDC and non-AFDC, under the State plan from initial referral or application through collection and enforcement.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 454(16) of the Social Security Act (42 U.S.C. 654(16))

[46 FR 47793, Sept. 30, 1981]

PART 303—STANDARDS FOR PROGRAM OPERATIONS

Sec.

303.0 Scope and applicability of this part.
303.1 Definitions.
303.2 Maintenance of case records.
303.3 Location of absent parents.
303.4 Establishment of support obligation.
303.5 Establishment of paternity.
303.6 Enforcement of support obligations.
303.7 Cooperation with other States.
303.20 Minimum organizational and staffing requirements.
303.65 Approval of advance planning documents for computerized child support enforcement systems eligible for 90 percent FFP.
303.66 Review of computerized child support enforcement systems eligible for 90 percent FFP.
303.67 Suspension of approval of advance planning documents for computerized child support enforcement systems eligible for 90 percent FFP.

AUTHORITY: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

SOURCE: 40 FR 27164, June 26, 1975, unless otherwise noted.

§ 303.0 Scope and applicability of this part.

This part prescribes:

(a) The minimum organizational and staffing requirements the State IV-D agency must meet in carrying out the IV-D program, effective July 1, 1975; and,

(b) The standards for program operation which the IV-D agency must meet.

[41 FR 55348, Dec. 20, 1976]

§ 303.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 303.2 Maintenance of case records.

For all cases referred to the IV-D agency pursuant to § 235.70 of this title or applying under § 302.33 of this chapter, the IV-D agency must immediately establish a case record which will contain all information collected pertaining to the case. When applicable, such information will include, but not be limited to the following:

(a) The referral document or documents received from the IV-A agency or the application for IV-D services of any other individual;

(b) A record of any contacts with an applicant or recipient of assistance under Title IV-A who is required to cooperate pursuant to § 232.11 of this title, the date and reason therefor and the results of such contact;

(c) A record of any contacts with an individual who has applied for services under § 302.33, the date and reason therefor and the results of such contact;

(d) A record of any contacts with the absent parent, the date and reason therefor and the results of such contact;

(e) A record of efforts to utilize local locate resources and the dates and the results of these efforts;

(f) A record of efforts to utilize State locate resources and the dates and the results of these efforts;

(g) A record identifying the court order or, if there is no court order, the calculation of the amount of the obligation utilizing the formula prescribed

in the State plan pursuant to § 302.53 of this chapter.

(h) A record of any actions taken under §§ 303.3-303.6, and the dates and results thereof;

(i) A record of communications to and from the State or local agency administering the State's title IV-A plan;

(j) A record of communications to and from any other IV-D agencies;

(k) A record of communications to and from the Regional Office and the Federal PLS; and,

(l) A notation in the case record of the closing of the case, the date thereof, and the reason for taking the action.

§ 303.3 Location of absent parents.

For all cases referred to the IV-D agency pursuant to § 235.70 of this title or applying under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents when their location is unknown. Under this standard, the IV-D agency must:

(a) Use appropriate local locate sources such as officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision), relatives and friends of the absent parent, current or past employers, the local telephone company, the U.S. Postal Service, financial references, unions, fraternal organizations, and police, parole, and probation records if appropriate;

(b) Establish working relationships with all appropriate local agencies in order to utilize local locate resources effectively;

(c) Use appropriate State agencies and departments, which as a minimum must include those departments which maintain records of public assistance, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(d) Utilize all appropriate State and local locate sources within 60 days of referral of the case pursuant to § 235.70 of this title or application under § 302.33;

(e) Transmit appropriate cases to the Federal PLS to locate absent parents;

(f) Refer cases to the IV-D agency of any other State if there is reasonable belief that the absent parent may be present in such State. The IV-D agency of such other State shall follow the procedures prescribed in paragraphs (a)-(d) of this section for such cases.

[43 FR 33249, July 31, 1978]

§ 303.4 Establishment of support obligations.

For all cases referred to the IV-D agency pursuant to § 235.70 of this title or applying under § 302.33 of this chapter, the IV-D Agency must:

(a) When necessary, establish paternity pursuant to the standards of § 303.5;

(b) Utilize appropriate State statutes and legal processes in establishing the support obligation pursuant to § 302.50 of this chapter.

(c) Review the support obligation periodically and whenever the IV-D agency becomes aware of changes in the factors which determine the amount of the support obligation.

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV-D agency pursuant to § 235.70 of this title or applying under § 302.33 of this chapter in which paternity has not yet been established, the IV-D agency must:

(1) Attempt to establish paternity by court order or other legal process established under State law; or

(2) Establish paternity by acknowledgment if under the State law such acknowledgment has the same legal effect as court-ordered paternity, including the right to benefits other than child support.

(b) The IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity.

(c) The IV-D agency shall identify laboratories within the State which

perform legally and medically acceptable tests, including blood tests, which tend to identify the father or exclude the alleged father from paternity. A list of such laboratories shall be available to appropriate courts and law enforcement officials, and to the public upon request.

§ 303.6 Enforcement of support obligations.

For all cases under the State plan in which the obligation to support and the amount of the obligation have been established, the IV-D agency must maintain an effective system for identifying, within 30 days, those cases in which there is a failure to comply with the support obligation and to contact such delinquent individuals as soon as possible in order to enforce the obligation and obtain the current support obligation and any arrearages. Such attempts to collect support must include the institution of the following procedures as applicable and necessary:

(a) Contempt proceedings to enforce an extant court order;

(b) Garnishment or similar proceedings if the State's statutes and constitution permit such a procedure and the individual can be brought under the jurisdiction of the courts of the State;

(c) Proceedings to attach real or personal property if the State's law provides for such a procedure and the individual is subject to such procedure;

(d) Any other collection or enforcement procedure described in the State plan pursuant to § 302.17 of this chapter;

(e) Applications to utilize the courts of the United States pursuant to § 302.72 of this chapter, and proceedings to enforce an order in the courts of the United States if such application is certified; and,

(f) Applications for collection of the delinquent child support obligation by the Secretary of the Treasury pursuant to § 302.71 of this chapter.

§ 303.7 Cooperation with other States.

(a) For all cases referred to the IV-D agency under the State plan of another State, the IV-D agency must assist the other State in locating an absent parent, establishing paternity, or securing support for a child in the other State. Under this standard, the IV-D agency must:

(1) When necessary, locate the putative father or absent parent utilizing the standards prescribed in § 303.3;

(2) When necessary, establish paternity or assist the other State in establishing paternity;

(3) Process and enforce all court orders referred by another State, whether pursuant to the Uniform Reciprocal Enforcement of Support Act or other legal processes. The IV-D agency shall utilize the same remedies normally applied to its own cases;

(4) Collect any support payments from the absent parent and forward them to the State to whom they are owed; and,

(5) Inform the State which initiated the action of the status of the case periodically and on request.

(b) For all cases referred for securing support by the IV-D agency under the State plan to the IV-D agency of another State, the IV-D agency must provide the IV-D agency of the other State sufficient information to act on the case, including but not limited to the following:

(1) Whether the case involves a recipient of aid under the State's title IV-A plan;

(2) The amount of the current assistance payment, if any;

(3) Notice of any termination of eligibility for assistance; and

(4) Any other information prescribed by instructions of the Office.

(c) For all cases referred by the IV-D agency under the State plan to the IV-D agency of another State which require location activities, the IV-D agency shall provide sufficient information to assist the IV-D agency of the other State, such as the absent parent's social security account number and other identifying information to the extent it is available.

§ 303.20 Minimum organizational and staffing requirements.

(a) The organizational structure of the IV-D agency (See § 302.12) provides for administration or supervision of all the functions for which it is re-

sponsible under the State plan, is appropriate to the size and scope of the program in the State, and contains clearly established lines for administrative and supervisory authority.

(b) There is an organizational structure and sufficient staff to fulfill the following required State level functions:

(1) The establishment and administration of the State plan.

(2) Formal evaluation of the quality, efficiency, effectiveness, and scope of services provided under the plan.

(3) Coordination of activities pursuant to, and assurance of compliance with, the requirements of the State's Reciprocal Enforcement of Support Act for cases pursuant to a State plan.

(4) Requests to the DHHS Office of Child Support Enforcement for use of the Federal Parent Locator Service, the U.S. District Courts, and IRS collection procedures.

(5) Preparation and submission of reports required by the Office.

(6) Financial control of the operation of the plan.

(7) Operation of the State Parent Locator Service as required under § 302.35 of this chapter.

(c) There is an organizational structure and sufficient staff, at the State or local level, to provide for the administration or supervision of the following child support enforcement functions:

(1) *Intake.* Activities associated with initial child support case opening.

(2) *Establishing the legal obligation to support.* Activities related to determining the absent parent's legal obligation to support his or her dependent children, including paternity determination when necessary.

(3) *Locate.* Activities associated with locating an absent parent.

(4) *Financial assessment.* Activities related to determining an absent parent's ability to provide support.

(5) *Establishment of the amount of support.* Activities related to determining an absent parent's support obligation, including methods and terms of payment.

(6) *Collection.* Activities related to monitoring payment activities and processing cash flow.

(7) *Enforcement.* Activities to enforce collection of support, including but not limited to and executing contempt proceedings, wage assignments, obtaining garnishment orders, attaching real and personal property, criminal prosecution and executing judgments.

(8) *Investigation.* Activities related to investigation necessary to accomplish the functions of this paragraph.

(d) The functions referred to in paragraph (b) (1), (2) and (6) of this section may not be delegated by the IV-D agency. The functions referred to in paragraph (b)(5) of this section may be delegated to the extent necessary to report on activities delegated by the IV-D agency.

(e) No functions under the State plan may be delegated by the IV-D agency if such functions are to be performed by caseworkers who are also performing the assistance payments or social services functions under title IV-A or XX of the Act.

In the case of a sparsely populated geographic area, upon justification by the IV-D agency documenting a lack of administrative feasibility in not utilizing staff of the IV-A agency, the Office may approve alternate arrangements that include sufficient reporting and cost allocation methods that will assure compliance with Federal requirements and proper claims for Federal financial participation. Under this provision:

(1) "Caseworker" means any person who has decision-making authority over individual cases on a day-to-day basis and includes, but is not limited to such designations as intake worker, eligibility technician, caseworker, and social worker.

(2) The "assistance payments function" means activities related to determination of eligibility for, and amount of financial assistance under the approved State plan under title I, IV-A, X, XIV, or XVI, State Supplemental income payments under title XVI of the Act, and State or local General Assistance programs. It includes the complete process of determining initial and continuing eligibility for financial and medical assistance and commodities distribution or food stamps.

(3) The "social services function" means those activities included in the approved State plan and carried out pursuant to Parts 220, 222 and 226 of this title or carried out pursuant to title XX of the Act. It includes determination of eligibility for, and delivery of services to, families and individuals under the approved State plan or under title XX of the Act.

(f) There are the following types of staff in sufficient numbers to achieve the standards for an effective program prescribed in this part:

(1) Attorneys or prosecutors to represent the agency in court or administrative proceedings with respect to the establishment and enforcement of orders of paternity and support, and

(2) Other personnel such as legal, interviewer, investigative, accounting, clerical, and other supportive staff.

§ 303.65 Approval of advance planning documents for computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Conditions for initial approval.* In order to be approvable, an initial APD for a computerized child support enforcement system described under § 302-85 of this chapter must meet the following requirements:

(1) The APD must represent the sole systems effort being undertaken by the State in accordance with § 302.85 of this chapter;

(2) The APD must specify how the objectives of the computerized child support enforcement system in § 302.85 of this chapter will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 302.85 of this chapter and how the system will encompass all political subdivisions in the State within a reasonable period of time;

(3) The APD must assure the feasibility of the proposed effort and provide for the conduct of a requirements analysis study which addresses all system components within the State and includes consideration of the program mission, functions, organization, services, constraints, and current support related to the computerized child support enforcement system;

(4) The APD must indicate how the results of the requirements analysis study will be incorporated into the proposed system design, development, installation or enhancement;

(5) The APD must contain a description of each component within the proposed computerized child support enforcement system as required by § 302.85 of this chapter and must describe information flows, input data, and output reports and uses;

(6) The APD must describe the security requirements to be employed in the proposed computerized child support enforcement system;

(7) The APD must describe the intrastate and interstate interfaces set forth in § 302.85 to be employed in the proposed computerized child support enforcement system;

(8) The APD must describe the projected resource requirements for staff, hardware, and other needs and the resources available or expected to be available to meet the requirements;

(9) The APD must contain a proposed budget including a description of estimated expenditures by category and amount for:

(i) Items that are eligible for Federal funding at the 90 percent rate; and

(ii) Items related to operating the system that are eligible for Federal funding at the 75 percent rate;

(10) The APD must contain an implementation plan and backup procedures to handle possible failures in system planning, design, development, installation or enhancement;

(11) The APD must describe each alternative system considered including the advantages of the proposed system over the alternatives; if a Model CSES or a State system that the Office has identified for consideration by State IV-D agencies is not proposed, these systems must be among the alternatives considered; if a system that is already in place in the State could be enhanced to meet the requirements for 90 percent FFP, that system must be among the alternatives considered;

(12) The APD must contain a cost benefit analysis of the proposed computerized child support enforcement system that describes the proposed im-

provements to the IV-D program in both qualitative and quantitative terms;

(13) The APD must specify the basis for determining direct and indirect costs of the computerized child support enforcement system during development and operation, including the methodology for determining costs of planning, design, development, installation or enhancement that are eligible for 90 percent Federal funding versus costs of operations that are eligible for 75 percent Federal funding;

(14) The APD must contain a statement indicating the period of time the State expects to use the proposed computerized child support enforcement system.

(c) *Conditions for approval of annual update.* The APD for a computerized child support enforcement system described under § 302.85 of this chapter must be updated annually. In order to be approvable, the annual update of an APD for a computerized child support enforcement system described under § 302.85 of this chapter must meet only those requirements of paragraph (b) of this section that are prescribed by instructions issued by the Office.

(d) *Periodic update of APD budget.* The budget required under paragraph (b)(9) of this section must be updated any time a cost overrun is anticipated if as a result of the cost overrun:

(1) The total APD budget will be exceeded resulting in the need for additional Federal funding; or

(2) Where the Federal share of the total APD budget exceeds $100,000, the increase of a direct cost category is expected to exceed 5 percent of the total budget. (See § 304.90(f) of this chapter on treatment of cost overruns.)

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 452(d) and (e), (42 U.S.C. 652(d) and (e)))

[46 FR 47794, Sept. 30, 1981]

§ 303.66 Review of computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Office review.* The Office will on a continuous basis review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized child support enforcement systems developed under § 302.85 to determine the extent to which such systems:

(1) Meet the requirements found in § 303.65 of this part; and

(2) Meet the conditions in § 302.85 of this chapter.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 452(d) and (e), (42 U.S.C. 652(d) and (e)))

[46 FR 47795, Sept. 30, 1981]

§ 303.67 Suspension of approval of advance planning documents for computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Suspension of approval.* (1) The Office will suspend approval of the APD for a computerized child support enforcement system approved and developed under § 302.85 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions in the APD. Federal funding will be disallowed as described in § 304.90(e) of this chapter.

(2) The Office will immediately notify the State in writing of the decision to suspend approval of the APD. The notice will give the reasons for and effective date of the suspension and specify the actions required for the State to receive Federal funding in the future for its systems activities.

(c) *Duration of suspension.* The suspension of approval of an APD under paragraph (b) shall remain in effect until the Office determines that actions required for Federal funding in the future, as specified in the notice of suspension, have been taken and the Office so notifies the State.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 452(d) and (e), (42 U.S.C. 652(d) and (e)))

[46 FR 47795, Sept 30, 1981]

PART 304—FEDERAL FINANCIAL PARTICIPATION

Sec.

304.10 General administrative requirements.
304.11 Effect of State rules.
304.20 Availability and rate of Federal financial participation.
304.21 Federal financial participation in the costs of cooperative agreements with courts and law enforcement officials.
304.22 Federal financial participation in purchased child support enforcement services.
304.23 Expenditures for which Federal financial participation is not available.
304.24 Federal financial participation in non-expendable personal property.
304.25 Treatment of expenditures; due date.
304.26 Determination of Federal share of collections.
304.27 Federal financial participation in the operation of the Child Support Enforcement Program in the absence of an assignment.
304.28 Federal financial participation at the 50 percent rate.
304.29 Applicability of other regulations.
304.30 Public sources of State's share.
304.40 Repayment of Federal funds by installments.
304.90 Federal financial participation at the 90 percent rate for computerized child support enforcement systems.
304.91 Federal financial participation at the 75 percent rate for computerized child support enforcement systems.

AUTHORITY: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302, unless otherwise noted.

SOURCE: 40 FR 27166, June 26, 1975, unless otherwise noted.

§ 304.10 General administrative requirements.

As a condition for Federal financial participation, the provisions of Part 74 of this title (with the exception of Subpart G, Matching and Cost Sharing and Subpart I, Financial Reporting Requirements) establishing uniform administrative requirements and cost principles shall apply to all grants made to States under this part.

§ 304.11 Effect of State rules.

Subject to the provisions and limitations of Title IV-D of the Act and Chapter III, Federal financial participation will be available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local child support enforcement agencies.

§ 304.20 Availability and rate of Federal financial participation.

(a) Federal financial participation at the 75 percent rate is available for:

(1) Necessary expenditures under the State title IV-D plan for the child support enforcement services and activities specified in this section and § 304.21 provided to individuals from whom an assignment of support rights has been obtained pursuant to § 232.11 of this title;

(2) Collection services pursuant to § 302.51(e)(1) of this chapter;

(3) Parent locator services for individuals eligible pursuant to § 302.33 of this title;

(4) Paternity and child support services under the State plan for individuals eligible pursuant to § 302.33 of this chapter.

(b) Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the child support enforcement program including the following:

(1) The administration of the State Child Support Enforcement Program, including, but not limited to the following:

(i) The establishment and administration of the State plan;

(ii) Monitoring the progress of program development and operations and evaluating the quality, efficiency, effectiveness and scope of child support enforcement services available in each political subdivision;

(iii) The establishment of all necessary agreements with other State and local agencies or private providers for the provision of services in support of child support enforcement in accordance with Subpart P, Procurement Standards, 45 CFR Part 74. These agreements may include:

(A) Necessary administrative agreements for support services;

(B) Utilization of State and local information resources;

(C) Cooperation with courts and law enforcement officials pursuant to § 302.34 of this chapter;

(iv) Securing compliance with the requirements of the State plan in operations under any agreements;

(v) The development and maintenance of systems for fiscal and program records and reports required to be made to the Office based on these records;

(vi) The development of a cost allocation system pursuant to § 302.16 of this chapter;

(vii) The financial control of the State plan including the administration of Federal grants pursuant to § 301.15 of this chapter;

(viii) The establishment of agreements with agencies administering the State's Title IV-A plan in order to establish criteria for:

(A) Referral of cases to the IV-D agency;

(B) Reporting on a timely basis information necessary to the determination and redetermination of eligibility and amount of assistance payments;

(C) Determining if individuals receiving assistance under the IV-A plan are cooperating adequately as required in § 232.12 of this title;

(D) The procedures to be used to transfer collections from the IV-D agency to the IV-A agency before or after the distribution described in § 302.51 of this chapter.

(2) The establishment of paternity including:

(i) Reasonable attempts to determine the identity of the child's father such as:

(A) Investigation;

(B) The development of evidence including the use of the polygraph and blood tests;

(C) Pre-trial discovery;

(ii) Court or other actions to establish paternity pursuant to procedures established under State statutes or regulations having the effect of law;

(iii) Identifying competent laboratories that perform blood tests as described in § 303.5(b) of this chapter and making a list of those laboratories available;

(iv) Referral of cases to the IV-D agency of another State to establish paternity when appropriate;

(v) Cooperation with other States in determining paternity;

(3) The establishment and enforcement of support obligations including:

(i) Investigation, the development of evidence and when appropriate, bringing court actions;

(ii) Determination of the amount of the support obligation including developing the information needed for a financial assessment;

(iii) Referral of cases to the IV-D agency of another State to establish a support obligation when appropriate;

(iv) Enforcement of the support obligation including those activities associated with collections and the enforcement of court orders, such as contempt citations, issuance of warrants, investigation, wage attachment and processing, and the obtaining and enforcing of court-ordered support through civil or criminal proceedings either in the State that granted the order or in another State;

(v) Investigation and prosecution of fraud related to child support.

(4) The collection and distribution of support payments including:

(i) An effective system for making collections of established support obligations and identifying delinquent cases and attempting to collect support from these cases;

(ii) Collection of child support pursuant to § 302.51(e)(1) of this chapter;

(iii) Referral of cases to the IV-D agency of another State for collection when appropriate;

(iv) Making collections for another State;

(v) The distribution of funds as required by this chapter;

(vi) Making the IV-A agency aware of the amounts collected and distributed to the family for the purposes of determining eligibility for, and amount of, assistance under the State title IV-A plan;

(5) The establishment and operation of the State parent locator service including:

(i) Utilization of appropriate State and local locate sources to locate absent parents;

(ii) Utilization of the Federal Parent Locator Service;

(iii) Collection of the fee pursuant to §§ 302.35(e) and 302.70(f) of this chapter;

(iv) Referral of requests for location of an absent parent to the IV-D agency of another State;

(v) Cooperation with another State in locating an absent parent;

(6) Activities related to requests for certification of collection of child support delinquencies by the Secretary of the Treasury pursuant to § 302.71 of this chapter.

(7) Activities related to requests for utilization of the United States district courts pursuant to § 302.72 of this chapter.

(8) Establishing and maintaining case records as required by § 302.2 of this chapter.

[40 FR 27166, June 26, 1975, as amended at 41 FR 43150, Sept. 30, 1976; 45 FR 41428, June 19, 1980; 46 FR 1276, Jan. 6, 1981]

§ 304.21 Federal financial participation in the costs of cooperative agreements with courts and law enforcement officials.

(a) Federal financial participation at the 75 percent rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials pursuant to § 302.34 of this chapter. "Law-enforcement officials" means district attorneys, attorneys general, and similar public attorneys and prosecutors and their staff. Federal financial participation is available for costs incurred consistent with the agreement as of the first day of a calendar quarter if the agreement is executed prior to the end of the quarter. When performed pursuant to written agreement, cost of the following activities are subject to reimbursement:

(1) Subject to the conditions of § 304.20(a) of this chapter, the activities, including administration of such activities, specified in § 304.20(b)(2)-(8) of this chapter;

(2) Reasonable and essential short term training of court and law enforcement staff assigned on a full or part time basis to child support enforcement functions pursuant to the cooperative agreement.

(b) Federal financial participation is not available for:

(1) Service of process and court filing fees unless the court or the law enforcement agency would normally be required to pay the cost of such fees;

(2) Compensation (salaries and fringe benefits) of judges.

(3) Any costs incurred by a court in making judicial determinations.

(c) If an individual performs activities eligible for FFP under this section and also spends time performing activities as part of judicial determinations or other activities which are not eligible for FFP, the time spent by this individual performing activities eligible for FFP must be accounted for in accordance with instructions issued by OCSE.

[43 FR 33250, July 31, 1978]

NOTE: At 44 FR 56939, Oct. 3, 1979, § 304.21, as revised July 31, 1978, was made effective retroactive to July 1, 1975.

§ 304.22 Federal financial participation in purchased child support enforcement services.

Federal financial participation is available at the 75 percent rate for the purchase of child support enforcement services as provided for in the State plan to the extent that payment for such purchased services is in accordance with rates of payment established by the State which do not exceed the amounts reasonable and necessary to assure quality of such service and in the case of such services purchased from other public agencies, the cost reasonably assignable to such services. The determination that the amounts are reasonable and necessary and that the costs are reasonably assignable must be fully documented in the IV-D agency records. Child support enforcement services which may be purchased with Federal financial participation are those for which Federal financial participation is otherwise available under § 304.20 and which are included under the approved State plan.

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation is not available under this part for:

(a) Activities related to administering title I, IV-A, X, XIV, XVI, XIX or XX of the Act.

(b) Purchased child support enforcement services which are not secured in accordance with § 304.22.

(c) Construction and major renovations.

(d) Education and training programs and educational services except direct cost of short term training provided to IV-D agency staff or pursuant to § 304.21.

(e) Any expenditures which have been reimbursed by fees collected as required by this chapter.

(f) Any costs of caseworkers as described in § 303.20(e) of this part.

(g) Medical support enforcement activities. (See Part 306 of this chapter and 42 CFR 433.140(b) concerning the availability of funding for these activities.)

(Secs. 1102, 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k))

[40 FR 27166, June 26, 1975, as amended at 45 FR 8987, Feb. 11, 1980]

§ 304.24 Federal financial participation in non-expendable personal property.

(a) *Conditions for Federal financial participation.* Federal financial participation is available at the 75 percent rate in amounts expended by the IV-D agency for a unit of non-expendable personal property which has a useful life of more than one year only to the extent of the depreciation expense (or annual use allowance of 6⅔ percent of acquisition cost) applicable to the period for which the property was used under a Federal program or activity; except that:

(1) Amounts expended for non-expendable personal property costing less than $5,000 may be subject to Federal financial participation for the full cost at the 75 percent rate at the time of acquisition at the option of the IV-D agency, except as provided in paragraphs (a) (2) and (3) of this section.

(2) Non-expendable personal property acquired under cost reimbursement contracts with the IV-D agency or for use under contracts with other agencies or providers shall be capitalized and depreciated (or subject to use allowance) when it has an acquisition cost of $300 or more.

(3) Non-expendable personal property acquired and assigned for use to organizational elements of the IV-D agency, or of the department in which the IV-D agency is located, which are treated as indirect costs centers or pools in a Departmental Indirect Cost Rate or in a department wide cost allocation plan, shall be capitalized and depreciated (or subject to a use allowance) when it has an acquisition cost of $300 or more.

(b) *Definitions.* (1) Acquisition cost is the amount expended by a IV-D agency for the property (excluding interest) plus, in the case of property acquired with a trade-in, the book value (acquisition cost less amount depreciated through the date of trade in) of the property traded in. Property which was expensed when acquired which is traded in has a book value of zero.

(2) Depreciation expense for any time period is the portion of the acquisition cost of property which is assignable to that time period. The acquisition cost of the property shall be divided by the number of years of estimated useful service life of the property to arrive at the depreciation expense per year. This method shall be used unless a State obtains approval from the Regional Child Support Office to use another method, which must be demonstrated to be more consistent with the using up of the asset.

(3) The number of years of estimated useful service life of property shall be based on the Department of Treasury, Internal Revenue Service policies on depreciation for tax purposes. However, the Regional Child Support Office will approve a shorter period, if the IV-D agency can document that such period is justified.

(c) *Other administrative requirements*—(1) *Distribution of costs.* Amounts expended by the IV-D agency for non-expendable personal property may be directly charged to the Child Support Enforcement Program, if the property is being exclu-

sively used for the program or activity at the time of the expenditures for the property. Amounts expended for such property not exclusively used for the Child Support Enforcement Program shall be allocated to such program and to other programs or activities by using one of the following methods:

(i) Using cost centers or pools and allocation bases which will distribute the costs consistent with program or activity usage of the property at the time of the expenditures. Any credits for property sold or retained for agency use in non-Federal programs (see § 74.134 of this title) shall be distributed to programs or activities consistent with the distribution methods used for such property expenditures at the time of acquisition; or

(ii) Using a common distribution factor for all property or for classifications of property (e.g., desks distributed based on number of staff employed in each program or activity). Credits for property sold or retained for use in non-Federal programs shall be distributed to programs or activities using the same distribution factors which are applied to expenditures for property acquired in the quarter in which such credits occurred.

(2) *Accountability and management of non-expendable property.* The provision in § 304.24(a)(1) does not affect the requirements on the IV-D agency to account for and manage non-expendable personal property as defined in § 74.132 of this title, in accordance with the provisions in § 74.134 through 136 of this title.

(3) *Disposition of Certain Property.* The IV-D agency shall not request disposition instructions for property with an acquisition cost of over $1,000 per unit as specified in § 74.134(c)(2) of this title, but rather shall sell the property and account for it as specified in § 74.134(c)(1) of this title.

§ 304.25 Treatment of expenditures; due date.

(a) *Treatment of expenditures.* Expenditures are considered to be made on the date on which the cash disbursements occur or the date to which allocated in accordance with Part 74 of this title. In the case of local administration, the date of disbursements by the local agency governs. In the case of purchase of services from another public agency, the date of disbursements by such other public agency governs. Different rules may be applied with respect to a State, either generally or for particular classes of expenditures only upon justification by the State to the Office of Child Support Enforcement and approval by the Office.

(b) *Due date for expenditure statements.* The due date for the submission of the quarterly statement of expenditures under § 301.15 of this chapter is 30 days after the end of the quarter.

[42 FR 26427, May 24, 1977]

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of child support collected by the State and retained as reimbursement for AFDC payments, the State shall reimburse the Federal government to the extent of its participation in the financing of the AFDC payment. In computing the Federal share of child support collections, the State has two options:

(1) The State may use the AFDC FFP rate applicable to the period in which the assistance payment was made as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, this percentage shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the Federal share of collections shall be computed using the rate of Federal participation in the financing of:

(A) The individual assistance payment; or

(B) All of the assistance payments in the same month; or

(2) The State may use the current rate of AFDC FFP as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, the percentage applicable at the time of distribution shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the

average rate of Federal participation in the financing of assistance payments during the immediately preceding quarter shall be used in computing the Federal share of collections.

(b) If an incentive payment is made to a jurisdiction under § 302.52 of this chapter for the enforcement and collection of support obligations, the payment shall be made from the Federal share of collections computed in paragraph (a) of this section.

[46 FR 6949, Jan. 22, 1981]

§ 304.27 Federal financial participation in the operation of the Child Support Enforcement Program in the absence of an assignment.

(a) Federal financial participation is available at the 75 percent rate for expenditures made under an approved State plan pursuant to 45 CFR 302.40 until December 31, 1975, irrespective of the requirement of an assignment in § 302.20(a)(1).

(b) This section remains in effect until December 31, 1975 and as of the close of business on that date it is repealed.

[40 FR 52377, Nov. 11, 1975]

§ 304.28 Federal financial participation at the 50 percent rate.

For States to which a waiver has been granted by the Secretary pursuant to Section 201 of Pub. L. 94-88, Federal financial participation is available at the rate of 50 percent for the amounts expended by a State pursuant to a plan which meets the conditions, except as provided by such waiver, of Section 454 of the Act.

[40 FR 52377, Nov. 11, 1975]

§ 304.29 Applicability of other regulations.

Sections 201.14 and 201.15 of Chapter II of Title 45 of the Code of Federal Regulations, which establish procedures for disallowance, deferral and reconsideration of claims for expenditures submitted by the States, shall apply to all expenditures claimed for FFP under title IV-D of the Act. For purposes of applying those provisions under title IV-D, "Service" shall read "Office" which refers to the Office of Child Support Enforcement; "Administrator" shall read "Director" which refers to the Director, Office of Child Support Enforcement; "Deputy Administrator" shall read "Deputy Director" which refers to the Deputy Director, Office of Child Support Enforcement; "Regional Commissioner" shall read "Regional Representative" which refers to the Regional Representatives of the Office of Child Support Enforcement; and "State" shall refer to the State IV-D agency.

[42 FR 3843, Jan. 21, 1977]

§ 304.30 Public sources of State's share.

(a) Public funds, other than those derived from private resources, used by the IV-D agency for its child support enforcement program may be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Appropriated directly to the IV-D agency; or

(2) Funds of another public agency which are: (i) Transferred to the IV-D agency and are under its administrative control; or

(ii) Certified by the contributing public agency as representing expenditures under the State's IV-D plan, subject to the limitations of this part.

(b) Public funds used by the IV-D agency for its child support enforcement program may not be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Federal funds, unless authorized by Federal law to be used to match other Federal funds;

(2) Used to match other Federal funds.

[41 FR 7105, Feb. 17, 1976]

§ 304.40 Repayment of Federal funds by installments.

(a) *Basic conditions.* When a State has been reimbursed Federal funds for expenditures claimed under title IV-D, which is later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installment provided:

(1) [illegible] amount of the repayment exceeds [illegible] percent of the estimated annual [illegible]e share of expenditures for

80-152 O—82—13

the IV-D program as set forth in paragraph (b) of this section; and

(2) The State has notified the OCSE Regional Representative in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the IV-D program as follows:

Total repayment amount as percentage of State share of annual expenditures for the IV-D program	Number of quarters to make repayment
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest OCSE-OA-25 submitted by the State shall be used to estimate the State's share of annual expenditures for the IV-D program. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest OSCE-OA-25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In case of termination of the program, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½ percent of the annual State share for the IV-D program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures (SRA-OA-41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

(8) Interest on repayments will not be charged unless mandated by court order.

[42 FR 28885, June 6, 1977]

§ 304.90 Federal financial participation at the 90 percent rate for computerized child support enforcement systems.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Conditions that must be met for FFP.* Federal financial participation (FFP) is available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized child support enforcement system as described in § 302.85 of this chapter if:

(1) The Office has approved an APD in accordance with § 303.65 of this chapter;

(2) The Office determines that the system meets the requirements specified in § 302.85 of this chapter;

(3) The Office determines that the expenditures incurred are consistent with the approved APD;

(4) The Office determines that the computerized child support enforcement system is designed effectively and efficiently and will improve the management and administration of the State IV-D Plan;

(5) The State IV-D agency agrees in writing to use the system for a period of time which is consistent with the APD approved by the Office, or for any shorter period of time which the Office determines is sufficient to justify the Federal funds invested; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed, or enhanced with 90 percent FFP under this section subject to the Department of Health and Human Services license specified in paragraph (d) of this section.

(c) *Limitation on reimbursement of hardware and proprietary software.* FFP at the 90 percent rate is not available in expenditures for the rental or purchase of hardware or proprietary software except to the limited extent that the hardware or proprietary software is used for the planning, design, development, installation or enhancement of a computerized child support enforcement system as described in § 302.85 of this chapter. (See § 304.91 regarding reimbursement at the 75 percent rate.)

(d) *HHS rights to software.* The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under § 302.85. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 302.85 in another project or activity funded by the Federal government. (Also see 45 CFR 95.617.)

(e) *Consequences of suspension of the APD.* If the Office suspends approval of an APD in accordance with § 303.67 of this chapter during the planning, design, development, installation, enhancement or operation of the system:

(1) The Office shall disallow FFP as of the date the State failed to comply substantially with the approved APD; and

(2) FFP at the 90 percent rate will not be available in any expenditures incurred under the APD after the date of the suspension unless the Office determines that the State has taken the actions specified in the notice of suspension described in § 303.67(b)(2) of this chapter. The Office will notify the State in writing upon making such a determination.

(f) *Treatment of cost overruns.* FFP is available in cost overrun expendi-

tures described in § 303.65(d) only if the expenditures are approved by the Office. (See § 303.65 of this chapter for procedure for initiating approval process.)

(g) *Submittal of advance planning document.* The State IV-D agency must:

(1) Submit an advance planning document for a computerized child support enforcement system, approved and signed by the State IV-D Director and the appropriate State official;

(2) Submit annual updates of the APD at least 60 days before the beginning of the month that coincides with the month in which the initial APD was approved; and

(3) Obtain approval from the Office before incurring costs for activities not covered under an approved APD by amending the APD.

[46 FR 47795, Sept. 30, 1981]

§ 304.91 Federal financial participation at the 75 percent rate for computerized child support enforcement systems.

(a) *Definitions.* The definitions found in § 302.85 of this part also apply to this section.

(b) *Conditions that must be met for FFP.* Federal financial participation (FFP) at the 75 percent rate is available only in computerized child support enforcement system expenditures for:

(1) The operation of systems described in § 302.85 of this chapter if the conditions in § 303.65 are met; and

(2) Systems approved in accordance with Part 95, Subpart F of this title. This may include expenditures for a system which were disallowed by the Office because the system failed to comply substantially with an APD approved under § 303.65 of this chapter.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 455(a) of the Social Security Act (42 U.S.C. 655(a))

[46 FR 47796, Sept. 30, 1981]

PART 305—AUDIT AND PENALTY

Sec.

305.0 Scope.
305.1 Definitions.
305.10 Audit.
305.11 Audit period.
305.12 State comments.
305.13 State cooperation in annual audit.
305.20 Audit criteria.
305.21 Statewide operation.
305.22 State financial participation.
305.23 Single and separate organizational unit.
305.24 Establishing paternity.
305.25 Support obligations.
305.26 Enforcement of support obligation.
305.27 Child support payments to the IV-D agency.
305.28 Distribution of child support payment.
305.29 Payments to the family.
305.30 Incentive payments.
305.31 Individuals not otherwise eligible.
305.32 Cooperation with other States.
305.33 State parent locator service.
305.34 Cooperative arrangements.
305.35 Reports and maintenance of records.
305.36 Fiscal policies and accountability.
305.37 Safeguarding information.
305.38 Notice to child support agency.
305.39 Assignment of rights to support.
305.50 Penalty for failure to have an effective child support enforcement program.

AUTHORITY: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

SOURCE: 41 FR 55348, Dec. 20, 1976, unless otherwise noted.

§ 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Social Security Act for an annual audit of the effectiveness of the State Child Support Enforcement Programs under title IV-D and for a possible reduction in Federal reimbursement for the States' title IV-A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the annual audit. Sections 305.20 through 305.39 define an effective program for the purposes of this part, and establish audit criteria for determining program effectiveness. Section 305.50 provides for imposition of the penalty if a State is found by the Secretary not to have had an effective program.

§ 305.1 Definitions.

(a) The definitions found in § 301.1 of this chapter also are applicable to this part.

(b) As used in this part "procedures" means a written set of instructions which describe in detail the step by

step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV-D plan. The IV-D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political subdivision actually performing the function.

§ 305.10 Audit.

The Office of Child Support Enforcement will conduct an annual audit of each State as required by Sections 452(a)(4) and 403(h) of the Act for the purpose of determining whether the State has an effective IV-D program meeting the requirements of Section 402(a)(27) of the Act. The audit of each State's program will be a comprehensive review to determine that the State's program meets the criteria specified in §§ 305.20 through 305.39 of this part. During the course of the audit, the Office will:

(a) Make a critical investigation of the State's IV-D program through inspection, inquiries, observation, and confirmation; and

(b) Use the audit standards promulgated by the Comptroller General of the United States in the "Standards For Audit of Governmental Organizations, Programs, Activities, and Functions".

§ 305.11 Audit period.

The first period to be audited will be from January 1, 1977, through September 30, 1977. The second and following audits will be for the period October 1 through September 30 of each fiscal year.

§ 305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV-D agency. At that conference the Office will explain how the audit will be performed, inform the IV-D agency which political subdivisions of the State will be audited, and make preliminary arrangements for personnel and information to be made available.

(b) Prior to concluding the audit fieldwork, the Office will afford the State IV-D agency an opportunity for an audit exit conference at which time preliminary audit findings will be discussed and the IV-D agency may present any additional matter it believes should be considered in the audit findings.

(c) At the conclusion of the audit fieldwork, the Office will prepare and send to the IV-D agency a copy of its interim report on the results of the audit. Within 45 days from the date the report was sent by certified mail, the IV-D agency may submit written comments on any part of the report which the IV-D agency believes to be in error. The Office will incorporate such comments, if any, into the final audit report.

§ 305.13 State cooperation in annual audit.

(a) Each State shall make available to the Office such records or other supporting documentation as the Office's audit staff may request. The State shall also make available personnel associated with the State's IV-D program to provide answers which the audit staff may find necessary in order to conduct or complete the audit.

(b) Failure to comply with the requirements of this section may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.20 Audit criteria.

For the purposes of this part and Section 403(h) of the Act, in order to be found to have an effective program meeting the requirements of section 402(a)(27) of the Act;

(a) A State must be in compliance with each of the following title IV-D State plan requirements:

Statewide operation. (45 CFR 302.10)
State financial participation. (45 CFR 302.11)
Single and separate organizational unit. (45 CFR 302.12)
Establishing paternity. (45 CFR 302.31(a))
Support obligations. (45 CFR 302.50)
Enforcement of support obligation. (45 CFR 302.31(b))
Child support payments to the IV-D agency. (45 CFR 302.32)
Distribution of child support payments. (45 CFR 302.51)
Payments to the family. (45 CFR 302.38)

Incentive payments. (45 CFR 302.52)
Individuals not otherwise eligible. (45 CFR 302.33)
Cooperation with other States. (45 CFR 302.36)
State parent locator service. (45 CFR 302.35)
Cooperative arrangements. (45 CFR 302.34)
Reports and maintenance of records. (45 CFR 302.15)
Fiscal policies and accountability. (45 CFR 302.14)
Safeguarding information (45 CFR 302.18); and

(b) The IV-D agency must be receiving notice from the IV-A agency for cases in which AFDC is furnished with respect to a child who has been abandoned or deserted by a parent (45 CFR 235.70), and the State must be obtaining assignments of rights to support (45 CFR 232.11).

§ 305.21 Statewide operation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement of Statewide operation (45 CFR 302.10), a State must have a IV-D agency that:

(a) Administers the plan uniformly throughout the State, or supervises the administration of the plan by its political subdivisions;

(b) Has established and is utilizing methods of informing staff of State policies, standards, procedures, and instructions;

(c) Has assigned IV-D staff at the State level to conduct regular, planned examination and evaluation of operation in local offices; and

(d) Makes available the services and functions as required by the approved State plan throughout the State.

§ 305.22 State financial participation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for State financial participation (45 CFR 302.11):

(a) A State must participate financially by incurring 25 percent of the cost of the program; and

(b) The funds representing the State's share must be appropriated to the IV-D Agency or transferred to the IV-D Agency, or certified by the contributing public agency as representing expenditures under the State's IV-D plan.

§ 305.23 Single and separate organizational unit.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for a single and separate organizational unit to administer the IV-D plan (45 CFR 302.12), a State must have such a unit which:

(a) Is responsible and accountable for the operation of the IV-D plan and for no other program or activity;

(b) Is responsible for securing compliance with requirements of the IV-D plan delegated to any other State or local agency or official, performed under cooperative agreement or purchase of service agreement; and

(c) Has staff assigned to perform all of the required State level functions listed in § 303.20(b) of this chapter.

§ 305.24 Establishing paternity.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement that the State undertake the establishment of paternity (45 CFR 302.31(a) and 302.33), a State must:

(a) Have established and be utilizing written procedures for obtaining the identity of the putative father from the applicant or recipient;

(b) Have written procedures for establishing paternity:

(1) By court order or other legal process established by State law; and,

(2) By acknowledgment, if under State law such acknowledgment has the same legal effect as court ordered paternity, including the rights to benefits other than child support;

(c) Be utilizing such written procedures to establish the paternity of any child born out of wedlock whose paternity has not previously been established and with respect to whom there is an assignment in effect pursuant to § 232.11 of this title or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter;

(d) Have identified and made a list of all laboratories within the State which, in the opinion of the IV-D

agency, perform legally and medically acceptable tests, including blood tests, which tend to confirm or refute the alleged paternity, and have made such list available to appropriate court and law enforcement officials, and to the public upon request;

(e) Have identified all State statutes and regulations that provide procedures to be used in determining the paternity of a child born out of wedlock as required by § 302.17 of this chapter;

(f) Have available attorneys or prosecutors to represent the State in court or administrative proceedings when necessary with respect to the establishment of paternity; and

(g) Have personnel, such as interviewers, investigators, clerical and other support staff performing paternity establishment functions.

§ 305.25 Support obligations.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to establish support obligations (45 CFR 302.50 and 302.53), a State must:

(a) Have established and be utilizing written procedures for the establishment of a child support obligation for any child;

(1) With respect to whom there is an assignment in effect pursuant to § 232.11 of this title or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter; and

(2) Who has not previously had a child support obligation established by court order or by other legal process established under State law;

(b) If the support obligation is established by means other than a court order, utilize the State's formula, pursuant to § 302.53 of this chapter, for determining the amount of the support obligation;

(c) Have available attorneys or prosecutors to represent the State in court or administrative proceedings when necessary to establish the support obligation; and

(d) Have personnel, such as interviewers, investigators, clerical, and other support staff, establishing support obligations.

§ 305.26 Enforcement of support obligation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to enforce support obligations (45 CFR 302.31(b)), a State must:

(a) Have established and be utilizing written procedures for identifying as delinquent those cases in which there is a failure to comply with the support obligation;

(b) Have established and be utilizing written procedures for contacting delinquent obligors for the purpose of collecting the support obligation;

(c) Have identified and established the appropriate written procedures, including but not limited to those specified in § 303.6 of this chapter, to enforce child support obligations under the State's statutes or regulations;

(d) Have established writen procedures for using reciprocal support enforcement arrangements that have been adopted with other States;

(e) Take appropriate action, using the procedures the State has established, to enforce support obligations;

(f) Have attorneys or prosecutors to represent the State in court or administrative proceedings when necessary to enforce delinquent support obligations; and

(g) Have personnel, such as interviewers, investigators, clerks and other support staff performing support obligation enforcement functions.

§ 305.27 Child support payments to the IV-D agency.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement of child support payments to the IV-D Agency (45 CFR 302.32) a State must:

(a) Have established and be utilizing written procedures for the receipt of child support payments by the IV-D agency with respect to cases in which there is an assignment of support rights pursuant to § 232.11 of this title;

(b) Have established and be utilizing written procedures for the receipt of child support payments by the IV-D agency with respect to cases in which there is an application for child support services pursuant to § 302.33 of

this chapter; unless, receipt of such payment is not necessary because:

(1) The State, under its approved title IV-D plan, does not recover costs in excess of the application fee; and

(2) The IV-D agency has established a system, approved by the Regional Office, for insuring that the IV-D agency can accurately make collections reports as required by the Office;

(c) Have established and be utilizing written procedures to identify child support payments that are not being received by the IV-D agency and to take corrective action;

(d) Have established and be utilizing written procedures that meet the requirements of § 302.32(b) of this chapter for informing the State's IV-A agency of the amounts of collection so that the family's continued eligibility for assistance payments can be determined; and

(e) Have personnel performing the activities described in this section.

§ 305.28 Distribution of child support payment.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for distribution of child support collections (45 CFR 302.51 and 302.32), a State must:

(a) Have written procedures which, if properly applied, would result in a distribution of child support collections which is in accordance with §§ 302.51 and 302.32 of this chapter;

(b) Be making the distribution of child support collections pursuant to the procedures it has established; and

(c) Have personnel distributing child support collections.

§ 305.29 Payments to the family.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for payment to the family (45 CFR 302.38), a State must distribute any payments required to be made to the family under §§ 302.32 and 302.51 of this chapter to the resident parent, legal guardian, or caretaker relative having custody of, or responsibility for, the child or children.

§ 305.30 Incentive payments.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to make incentive payments (45 CFR 302.52), a State must:

(a) Have established and be utilizing written procedures for making incentive payments in the proper amounts to other States and, if appropriate, to political subdivisions within the State;

(b) Have established and be utilizing written procedures to account for child support collections received so the "amount retained by the State to reduce or repay assistance payments" can be properly determined;

(c) Have established and be utilizing written procedures for determining that the collection was made by a State or political subdivision operating pursuant to an approved IV-D plan and was made on behalf of an individual with respect to whom there is an assignment in effect pursuant to § 232.11 of this title;

(d) Have established and be utilizing written procedures for determining which collections represent payments on the first 12 months of support obligations;

(e) Have established and be utilizing written procedures for ensuring that the incentive payments are made as soon as administratively feasible;

(f) Have established and be utilizing written procedures (in accordance with instruction issued by the Office) for allocating the incentive payment among jurisdictions when more than one jurisdiction is involved in the enforcement or collection; and

(g) Have personnel performing the functions specified in this section.

§ 305.31 Individuals not otherwise eligible.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for providing child support enforcement services to individuals not otherwise eligible (45 CFR 302.33), a State must:

(a) Have established and be utilizing written procedures for accepting signed, written applications on a Statewide basis for child support services from individuals not otherwise eligible under § 302.31 of this chapter.

(b) Have established and be utilizing written procedures for providing to applicants on a Statewide basis, all appropriate child support services available under the State's plan, including locating absent parents, establishing paternity and securing child support;

(c) Have established and be utilizing written procedures for collection of any fees and recovery of any costs authorized by the State's plan; and

(d) Have personnel performing child support enforcement services for applicants.

§ 305.32 Cooperation with other States.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for interstate cooperation (45 CFR 302.36), a State must:

(a) Have established and be utilizing written procedures for accepting and processing requests for assistance from other States;

(b) Have established and be utilizing written procedures for using the State's PLS (both State and local locate sources) in an attempt to locate an absent parent upon request of another State;

(c) Have established and be utilizing written procedures for establishing paternity or assisting in establishing paternity when requested by another State;

(d) Have established and be utilizing written procedures for establishing court orders for support upon request by another State, including procedures for responding to a complaint under the Uniform Reciprocal Enforcement of Support Act (URESA);

(e) Have established and be utilizing written procedures for collecting support payments from an absent parent and forwarding such payments to the State where the obligation is owed;

(f) Have established and be utilizing written procedures for monitoring the status of cases upon which the State is taking action on behalf of another State;

(g) Have established and be utilizing written procedures that comply with the requirements for providing sufficient information to other States as specified in § 303.7 of this chapter;

(h) Have personnel at the State level coordinating activities pursuant to, and assuring compliance with, the requirements of the State's URESA; and

(i) Have personnel performing the functions specified in this section.

§ 305.33 State parent locator service.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for a parent locator service (45 CFR 302.35), a State must:

(a) Have established and be utilizing a central State PLS office as required by § 302.35(a) of this chapter;

(b) Have identified and be utilizing major local locate data sources within the State such as those listed in § 303.3(a) of this chapter;

(c) Have identified and be utilizing major State locate data sources such as those listed in § 303.3(c) of this chapter;

(d) Be utilizing the Federal PLS when necessary pursuant to § 302.35(a)(2) and (d) of this chapter;

(e) Have established written procedures for accepting from a person authorized under § 302.35(c) of this chapter, an application to use the PLS;

(f) Have established and be utilizing written procedures for collecting any fees required by § 302.35(e) of this chapter and the State's plan;

(g) Be using the names and other identifying information of absent parents, the State and local locate data sources and the Federal PLS, in an attempt to determine the actual whereabouts of the absent parent, or determine that the whereabouts of the absent parent cannot be ascertained;

(h) Have developed and be using the protective measures to safeguard information transmitted and received through use of the Federal PLS as required by § 302.70(e) (2) and (3) of this chapter and instructions issued by the Office; and

(i) Have personnel, such as interviewers, investigators, clerks and other support staff performing the functions described in this section.

§ 305.34 Cooperative arrangements.

(a) For the purposes of this part, in order to be found to be in compliance

with the State plan requirement for cooperative arrangements (45 CFR 302.34), a State must utilize written cooperative agreements between the IV-D agency and appropriate courts and law enforcement officials to the extent necessary to establish paternity, establish and enforce child support obligations, collect child support, and cooperate with other States in these functions.

(b) This requirement will not be audited separately. However, cooperative agreements may be necessary in order for a State to meet the requirements of Part 302 of this chapter, if the IV-D agency does not have sufficient personnel and administrative procedures to accomplish these functions.

§ 305.35 Reports and maintenance of records.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for reports and maintenance of records (45 CFR 302.15), a State must:

(a) Have established and be utilizing written procedures for maintaining the records necessary for proper and efficient operation of the plan including those listed in § 302.15(a)(1) (i) through (vii) of this chapter;

(b) Have established and be utilizing a system for insuring that reports required by the Secretary are provided when due, and are accurate and complete; and

(c) Have personnel performing the functions specified in this section.

§ 305.36 Fiscal policies and accountability.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for fiscal policies and accountability (45 CFR 302.14), a State must:

(a) Have established and be maintaining and utilizing an accounting system and supporting fiscal records that assure that claims for Federal funds are in accord with applicable Federal regulations and instructions issued by the Office; and

(b) Have personnel performing the functions specified in this section.

§ 305.37 Safeguarding information.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for safeguarding information (45 CFR 302.18), a State must have established and be utilizing written procedures that restrict the use or disclosure of information concerning applicants or recipients of child support enforcement services to purposes listed in § 302.18(a) of this chapter.

§ 305.38 Notice to child support agency.

For the purposes of this part, the IV-D agency must be receiving notice from the IV-A agency (45 CFR 235.70) for cases in which AFDC is furnished with respect to a child who has been deserted or abandoned by a parent.

§ 305.39 Assignment of rights to support.

For the purposes of this part, a State must obtain assignments of support rights for AFDC applicants and have an assignment in effect for AFDC cases as required by 45 CFR 232.11, except where there has been a refusal to assign and the appropriate action under § 232.11 of this title was taken.

§ 305.50 Penalty for failure to have an effective child support enforcement program.

(a) Pursuant to sections 403(h) and 404(d) of the Act, if a State is found by the Secretary, on the basis of the results of the audit described in this part, to have failed to have an effective child support enforcement program meeting the requirements of Section 402(a)(27) of the Act, as implemented by Part 302 of this chapter and this part, total payment to the State under title IV-A of the Act shall be reduced by 5 percent of such payments.

(b) Any reduction required to be made under this section shall be made pursuant to § 205.146(d) of this title.

(c) The reconsideration of penalty imposition provided for by § 205.146(e) of this title shall be applicable to any reduction made pursuant to this section.

PART 306—MEDICAL SUPPORT ENFORCEMENT

Sec.
306.0 Scope of this part.
306.1 Definitions.
306.2 Cooperative agreement.
306.10 Functions to be performed under a cooperative agreement.
306.11 Administrative requirements of cooperative agreements.
306.20 Prior approval of cooperative agreements.
306.21 Subsidiary cooperative agreements with courts and law enforcement officials.
306.22 Purchase of service agreements.
306.30 Source of funds.
306.40 Maintenance of effort.

AUTHORITY: Secs. 1102, 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

SOURCE: 45 FR 8987, Feb. 11, 1980, unless otherwise noted.

§ 306.0 Scope of this part.

This part defines the requirements for a cooperative agreement between the IV-D agency and the Medicaid agency for the purpose of enforcing medical support obligations under Section 1912 of the Act.

§ 306.1 Definitions.

When used in this part, unless the context indicates otherwise:

(a) The definitions found in § 301.1 of this chapter also apply to this part.

(b) "Medicaid agency" means the single State agency that has the responsibility for the administration of, or supervising the administration of, the State plan under title XIX of the Act.

(c) "Medicaid" means medical assistance provided under a State plan approved under title XIX of the Act.

§ 306.2 Cooperative agreement.

The cooperative agreement between the IV-D agency and the Medicaid agency shall be a written agreement for the IV-D agency to assist the Medicaid agency by securing and enforcing the medical support obligation of an absent parent to a child for whom an assignment of medical support rights has been executed under 42 CFR 433.146. The functions that the IV-D agency may perform under the cooperative agreement are set forth in § 306.10. The administrative requirements are set forth at § 306.11.

§ 306.10 Functions to be performed under a cooperative agreement.

The functions that the IV-D agency may perform under a cooperative agreement with the Medicaid agency are limited to one or any combination of the following activities.

The agency may:

(a) Receive referrals from the Medicaid agency.

(b) Locate the absent parent, using the State Parent Locator Service and the Federal Parent Locator Service, as needed.

(c) Establish paternity if necessity.

(d) Determine whether the parent has a health insurance policy or plan that covers the child.

(e) Obtain sufficient information about the health insurance policy or plan to permit the filing of a claim with the insurer.

(f) File a claim with the insurer; or transmit the necessary information to the Medicaid agency, or to the appropriate State agency or fiscal agent for the filing of the claim; or require the absent parent to file a claim.

(g) Secure health insurance coverage through court or administrative order, when it will not reduce the absent parent's ability to pay child support.

(h) Take direct action against the absent parent to recover amounts necessary to reimburse medical assistance payments when the absent parent does not have health insurance and the amounts collected will not reduce the absent parent's ability to pay child support.

(i) Receive medical support collections.

(j) Distribute the collections as required by 42 CFR 433.154 including calculation and payment of the incentives provided for by 42 CFR 433.153.

(k) Perform other functions as may be specified by instructions issued by the Office of Child Support Enforcement.

[45 FR 8987, Feb. 11, 1980; 45 FR 74485, Nov. 10, 1980]

§ 306.11 Administrative requirements of cooperative agreements.

(a) *Organizational structure.* The cooperative agreement must:

(1) Describe the organizational structure of the unit or units within the IV-D agency that are responsible for medical support enforcement activities.

(2) List the medical support enforcement functions that are to be performed outside of the IV-D agency with the name of the organization responsible for performance.

(3) Provide that the IV-D agency shall have responsibility for securing compliance with the requirements of the cooperative agreement by individuals or agencies outside the IV-D agency performing medical support enforcement functions.

(b) *Maintenance of records.* The cooperative agreement must specify that the IV-D agency will establish and maintain case records of medical support enforcement activities in accordance with the provisions of § 302.15 of this chapter.

(c) *Safeguarding information.* The cooperative agreement must provide that the use or disclosure of information concerning applicants for, or recipients of, medical support enforcement services is subject to the limitations in § 302.18 of this chapter.

(d) *Fiscal policies and accountability.* (1) The cooperative agreement must provide that the IV-D agency will maintain an accounting system and supporting fiscal records adequate to assure that claims for reimbursement from the Medicaid agency are in accordance with applicable Federal requirements in 45 CFR Part 74.

(2) The cooperative agreement must provide for the establishment of a method for properly allocating those costs that cannot be directly charged to the medical support enforcement effort.

§ 306.20 Prior approval of cooperative agreements.

(a) Prior to implementation, the IV-D agency must submit two copies of any cooperative agreement entered into under this part to the Regional Representative for approval.

(b) The Regional Representative will review the cooperative agreement for conformity with the requirements of this part and 42 CFR 433.152.

(c) The Regional Representative will promptly notify the State of approval or disapproval. The State may consider the agreement approved if notification is not received within 60 days after the agreement is received by the Regional Representative.

§ 306.21 Subsidiary cooperative agreements with courts and law enforcement officials.

The IV-D agency will enter into subsidiary written cooperative agreements with appropriate courts and law enforcement officials to the extent necessary to perform those functions specified in the cooperative agreement between the IV-D agency and the Medicaid agency. These agreements must be made in accordance with the requirements of § 302.34 (Cooperative arrangements).

§ 306.22 Purchase of service agreements.

The IV-D agency will enter into written purchase of service agreements to the extent necessary to fulfill the requirements of its cooperative agreement with the Medicaid agency.

§ 306.30 Source of funds.

The cooperative agreement must specify that the IV-D agency will receive full reimbursement from the Medicaid agency for all medical support enforcement activities performed under the agreement. (See § 306.11(d) for requirements on fiscal policies and accountability.)

§ 306.40 Maintenance of effort.

A title IV-D agency entering into a cooperative agreement with a State Medicaid agency shall insure that as a result of its effort under the agreement there will be no decrease in Child Support Enforcement program activities, personnel or resources from the level allocated for the quarter in which these regulations become effective. If necessary to carry out its responsibilities under the cooperative agreement, the IV-D agency must obtain additional personnel and re-

sources. The IV-D agency must be able to document continued compliance with this maintenance of effort requirement.

PARTS 307—399 [RESERVED]

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CHAPTER IV—OFFICE OF REFUGEE RESETTLEMENT, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Part		*Page*
400	Refugee Resettlement Program	198
401-499	[Reserved]	

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

Sec.
400.1 Basis and purpose of the program.
400.2 Definitions.
400.3 Other HHS regulations that apply.

Subpart B—General Requirements

400.4 Purpose of the plan.
400.5 Content of the plan.
400.6 Plan amendments.
400.7 Submittal of plans for Governor's review.
400.8 Federal financial participation.
400.9 State advisory council.
400.10 Maintenance of records and reports.
400.11 Confidentiality of records.

AUTHORITY: Sec. 412(a)(9) Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

SOURCE: 45 FR 59323, Sept. 9, 1980, unless otherwise noted.

Subpart A—Introduction

§ 400.1 Basis and purpose of the program.

(a) This part prescribes requirements concerning grants to States under title IV of the Immigration and Nationality Act.

(b) It is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.

(c) Under the authority in sec. 412(a)(6)(B), the Director has established the provision of English language training and employment services as a priority in accomplishing the purpose of this program.

§ 400.2 Definitions.

The following definitions are applicable for purposes of this part:

"Act" means the Immigration and Nationality Act;

"Cash assistance" means financial assistance for which funding is available under title IV of the Immigration and Nationality Act;

"Director" means the Director, Office of Refugee Resettlement;

"HHS" means the Department of Health and Human Services:

"Medical assistance" means medical services for which funding is available under title IV of the Immigration and Nationality Act;

"ORR" means the Office of Refugee Resettlement;

"Plan" means a written commitment by a State submitted under section 412(a)(6)(A) of the Act, to administer or supervise the administration of a refugee resettlement program in accordance with Federal requirements.

"Support services" means services provided by, or purchased by, a State, which are designed to meet resettlement needs of refugees, for which funding is available under title IV of the Immigration and Nationality Act;

"State" means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa and the Trust Territories of the Pacific;

"State agency" means the agency designated by the Governor or the appropriate legislative authority of the State to develop and administer, or supervise the administration of, the plan under title IV of the Immigration and Nationality Act, and except where the context otherwise requires, includes any local agencies administering the plan under supervision of the State agency; and

"State Coordinator" means the individual designated by the Governor or the appropriate legislative authority of the State to be responsible for, and authorized to, ensure coordination of public and private resources of refugee resettlement.

§ 400.3 Other HHS regulations that apply.

The following HHS regulations apply to grants under this part:

42 CFR Part 441 Subparts E and F Services: Requirements and limits applicable to specific services—Abortions and Sterilizations.

45 CFR Part 16 Department grant appeals process.

45 CFR Part 74 Administration of grants.

45 CFR Part 75 Informal grant appeals procedures.

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearings under Part 80 of this title.

45 CFR Part 84 Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

Subpart B—General Requirements

§ 400.4 Purpose of the plan.

(a) In order for a State to receive refugee resettlement assistance from the allotments of funds under sec. 414 of the Act, it must submit, to ORR by October 1, 1980, a plan that the Director determines to meet the plan requirements in § 400.5.

(b) The plan is a statement submitted by the State describing the nature and scope of its program and giving assurances that the program will be administered in conformity with specific requirements stipulated in title IV of the Act, official issuances by the Director, and all applicable regulations. The plan contains information necessary for the Director to determine whether the plan meets the plan requirements under § 400.5 as a basis for Federal funding of the State program.

§ 400.5 Content of the plan.

The plan must:

(a) Provide for the designation of a State agency responsible for developing the plan, and administering, or supervising the administration of, the plan;

(b) Describe how the State will encourage effective refugee resettlement and promote economic self-sufficiency as quickly as possible, through effective use of cash assistance, medical assistance and support services;

(c) Describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance, and to other refugees, including State efforts to actively encourage refugee registration for employment services;

(d) Identify an individual designated by the Governor or the appropriate legislative authority of the State, with the title of State Coordinator, who is employed by the State, and will have the responsibility and authority to ensure coordination of public and private resources in refugee resettlement;

(e) Provide for the care and supervision of, and legal responsibility for, unaccompanied refugee children in the State;

(f) Provide for and describe the procedures established to identify refugees who, at the time of resettlement in the State, are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation, and the monitoring of any necessary treatment or observation;

(g) Specify the composition of the State advisory council established in accordance with the requirements of § 400.9 and describe how the State will ensure that the council is organized and operating by January 1, 1981;

(h) Provide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex or political opinion; and

(i) Provide that the State will comply with the provisions of title IV of the Act, official issuances of the Director, and all applicable regulations, and will amend the plan as needed to comply with standards, goals, and priorities established by the Director.

§ 400.6 Plan amendments.

A State's administration or supervision of the program under this part must conform with the plan submitted to ORR, and determined by the Director to meet the plan requirements in § 400.5. Before the State agency implements any material changes in the content or adminstration of the plan, it must submit an amendment to the plan to ORR that the Director determines to meet the plan requirements in § 400.5.

§ 400.7 Submittal of plans for Governor's review.

A plan or plan amendment under title IV of the Act must be submitted to the State Governor for review and comment before the plan is submitted to ORR, unless the Governor delegates the authority to review and comment on the plan and plan amendment to the designated State agency or State Coordinator.

80-152 O—82——14

§ 400.8 Federal financial participation.

(a) Federal financial participation, under the terms and conditions approved by the Director, will be made available under the plan to States for cash and medical assistance, refugee support services, and reasonable and necessary administrative costs of such assistance and services, provided to eligible refugees beginning October 1, 1980. The Director will establish quarterly grants which will be communicated to States each quarter.

(b) A State must submit claims for Federal reimbursement for assistance and services provided to refugees under the plan on forms prescribed by the Director.

§ 400.9 State advisory council.

(a) A State must establish an advisory council responsible for assisting in the development and reviewing of any plan amendments after January 1, 1981.

(b) The State advisory council must be comprised of no less than five and no more than 25 members who live in the State and who are—(1) refugees eligible to benefit from services under the plan by virtue of being a refugee; and (2) representatives from local government, voluntary resettlement organizations, service providers, and other interested private organizations and individuals. Appointment to the council must be for a period of one year.

(c) The State must consult with the advisory council during the development of any plan amendment, and provide for the advisory council's review of the contents of a plan amendment prior to its submittal to ORR.

§ 400.10 Maintenance of records and reports.

(a) A State must provide for the maintenance of such operational records as are necessary for Federal monitoring of the State's refugee resettlement program. This recordkeeping must include:

(1) Documentation of services and assistance provided, including identification of individuals receiving those services;

(2) Records on the progress and status of unaccompanied minor refugee children, including the last known address of parents; and

(3) Documentation that necessary medical follow up services and monitoring have been provided.

(b) A State must submit statistical or programmatic information that the Director determines to be required to fulfill his or her responsibility under the Act.

(c) In order for a State to receive refugee resettlement assistance from the allotment of funds under sec. 414 of the Act, it must submit to the Director of ORR, by December 31 of each year, an annual performance report and an annual financial status report on the uses of funds received and administered by the State in the fiscal year ending the previous September 30.

(d) The performance report must include:

(1) A narrative statement of the program status, including progress achieved, problems encountered, and plans for improvement of refugee resettlement;

(2) State cash assistance, medical assistance and support services caseloads;

(3) The number of refugees receiving English language training services and a description of the services provided;

(4) The number of refugees receiving employment-related services and a description of the services provided;

(5) A report on the status, location, and progress of unaccompanied refugee children admitted to the State; and

(6) Additional statistical or programmatic information that the Director may require to enable proper Federal monitoring of the State's program.

(e) The financial status report must include expenditures for, and other financial data on, cash assistance, medical assistance, support services (by type of service), and administration.

§ 400.11 Confidentiality of records.

Except for purposes directly connected with the administration of the program, a State must ensure that no information about, or obtained from, an individual and in possession of any agency providing assistance or services

to such individual under the plan, will be disclosed in a form identifiable with the individual without the individual's consent, or if the individual is a minor, the consent of his or her parent or guardian.

PARTS 401—499 [RESERVED]

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the subject index volume to the Code of Federal Regulations which is published separately and revised semiannually (January 1 and July 1).

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Tables
List of CFR Sections Affected

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Table of CFR Titles and Chapters

(As of September 30, 1981)

Title 1—General Provisions

Chap.

I Administrative Committee of the Federal Register (Parts 1-49)

II Office of the Federal Register (Parts 50-299)

III Administrative Conference of the United States (Parts 300-399)

IV Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

Proclamations

Executive Orders

Presidential Documents Other Than Proclamations and Executive Orders

I Executive Office of the President (Parts 100-199)

Title 4—Accounts

I General Accounting Office (Parts 1-99)

II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)

III General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 1-1199)

II Merit Systems Protection Board (Parts 1200-1299)

III Office of Management and Budget (Parts 1300-1399)

IV Advisory Committee on Federal Pay (Parts 1400-1499)

V The International Organizations Employees Loyalty Board (Parts 1500-1599)

VII Advisory Commission on Intergovernmental Relations (Parts 1700-1799)

IX Appalachian Regional Commission (Parts 1900-1999)

XI United States Soldiers' and Airmen's Home (Parts 2100-2199)

XIV Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

Title 5—Administrative Personnel—Continued

Chap.

XV Office of Administration, Executive Office of the President (Parts 2500-2599)

Title 6—Economic Stabilization

VI Assistant Secretary for Administration, Department of the Treasury (Parts 600-699)

VII Council on Wage and Price Stability (Parts 700-799)

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)

SUBTITLE B—Regulations of the Department of Agriculture

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)

II Food and Nutrition Service, Department of Agriculture (Parts 210-299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)

V Agricultural Research Service, Department of Agriculture (Parts 500-599)

VI Soil Conservation Service, Department of Agriculture (Parts 600-699)

VII Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)

VIII Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)

XII Statistical Reporting Service (Agricultural Statistics), Department of Agriculture (Parts 1300-1399)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)

XVII Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)

XVIII Farmers Home Administration, Department of Agriculture (Parts 1800-2099)

Title 7—Agriculture—Continued

Chap.

XXI Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)

XXIV Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

XXV Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)

XXVI Office of the Inspector General, Department of Agriculture (Parts 2600-2699)

XXVIII Food Safety and Quality Service, Department of Agriculture (Parts 2800-2899)

XXIX Office of Energy, Department of Agriculture (Parts 2900-2999)

XXX Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)

II Agricultural Marketing Service (Packers and Stockyards), Department of Agriculture (Parts 200-299)

III Food Safety and Quality Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0-199)

II Department of Energy (Parts 200-699)

III Department of Energy (Parts 700-999)

X Department of Energy (General Provisions) (Parts 1000-1099)

XV Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

Title 11—Federal Elections

I Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1-199)

II Federal Reserve System (Parts 200-299)

III Federal Deposit Insurance Corporation (Parts 300-399)

IV Export-Import Bank of the United States (Parts 400-499)

Title 12—Banks and Banking—Continued

Chap.

V Federal Home Loan Bank Board (Parts 500-599)

VI Farm Credit Administration (Parts 600-699)

VII National Credit Union Administration (Parts 700-799)

VIII Federal Financing Bank (Parts 800-899)

XI Federal Financial Institutions Examination Council (Parts 1100-1199)

XII Depository Institutions Deregulation Committee (Parts 1200-1299)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1-199)

III Economic Development Administration, Department of Commerce (Parts 300-399)

IV Chrysler Corporation Loan Guarantee Board (Parts 400-499)

V Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1-199)

II Civil Aeronautics Board (Parts 200-399)

V National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 20-199)

II National Bureau of Standards, Department of Commerce (Parts 200-299)

III International Trade Administration, Department of Commerce (Parts 300-399)

IV Foreign-Trade Zones Board (Parts 400-499)

V United States Metric Board (Parts 500-599)

VI Bureau of Industrial Economics, Department of Commerce (Parts 600-699)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800-899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)

XII United States Travel Service, Department of Commerce (Parts 1200-1299)

XIII East-West Foreign Trade Board (Parts 1300-1999)

Title 15—Commerce and Foreign Trade—Continued

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

Chap.

XX Office of the United States Trade Representative (Parts 2000-2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0-999)

II Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1-199)

II Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)

III Delaware River Basin Commission (Parts 400-499)

IV Office of Water Resources Research, Department of the Interior (Parts 500-599)

VI Water Resources Council (Parts 700-799)

VIII Susquehanna River Basin Commission (Parts 800-899)

XIII Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1-199)

II United States International Trade Commission (Parts 200-299)

III International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)

II Railroad Retirement Board (Parts 200-399)

III Social Security Administration, Department of Health and Human Services (Parts 400-499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)

V Employment and Training Administration, Department of Labor (Parts 600-699)

Title 20—Employees' Benefits—Continued

Chap.

VI Employment Standards Administration, Department of Labor (Parts 700-799)

VII Benefits Review Board, Department of Labor (Parts 800-899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

I Department of State (Parts 1-199)

II Agency for International Development, International Development Cooperation Agency (Parts 200-299)

III Peace Corps (Parts 300-399)

IV International Joint Commission, United States and Canada (Parts 400-499)

V International Communication Agency (Parts 500-599)

VI United States Arms Control and Disarmament Agency (Parts 600-699)

VII Overseas Private Investment Corporation (Parts 700-799)

VIII Employee-Management Relations Commission (Parts 800-899)

IX Foreign Service Grievance Board (Parts 900-999)

X Inter-American Foundation (Parts 1000-1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)

XII United States International Development Cooperation Agency (Parts 1200-1299)

XIII Board for International Broadcasting (Parts 1300-1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1-999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)

Title 24—Housing and Urban Development—Continued

SUBTITLE B—Regulations Relating to Housing and Urban Development

Chap.

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100–199)

II Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200–299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300–399)

IV Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400–499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500–599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600–699)

VII New Community Development Corporation, Department of Housing and Urban Development (Parts 700–799)

VIII Low-Income Housing, Department of Housing and Urban Development (Parts 800–899)

IX Office of Interstate Land Sales Registration, Department of Housing and Urban Development (Parts 1700–1799)

X Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800–1899)

XV Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700–2799)

XX Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development (Parts 3200–3699)

XXV Neighborhood Reinvestment Corporation (Parts 4100–4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1–299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300–399)

IV Navajo and Hopi Indian Relocation Commission (Parts 700–799)

Title 26—Internal Revenue

Chap.

I Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

I Department of Justice (Parts 0-199)

III Federal Prison Industries, Department of Justice (Parts 300-399)

V Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)

SUBTITLE B—Regulations Relating to Labor

I National Labor Relations Board (Parts 100-199)

II Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299)

III National Railroad Adjustment Board (Parts 300-399)

IV Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499)

V Wage and Hour Division, Department of Labor (Parts 500-899)

IX Construction Industry Collective Bargaining Commission (Parts 900-999)

X National Mediation Board (Parts 1200-1299)

XII Federal Mediation and Conciliation Service (Parts 1400-1499)

XIV Equal Employment Opportunity Commission (Parts 1600-1699)

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)

XX Occupational Safety and Health Review Commission (Parts 2200-2499)

XXV Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)

XXVI Pension Benefit Guaranty Corporation (Parts 2600-2699)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1-199)

II Geological Survey, Department of the Interior (Parts 200-299)

III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)

VI Bureau of Mines, Department of the Interior (Parts 600-699)

Title 30—Mineral Resources—Continued

Chap.

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)

SUBTITLE B—Regulations Relating to Money and Finance

I Monetary Offices, Department of the Treasury (Parts 51-199)

II Fiscal Service, Department of the Treasury (Parts 200-399)

IV Secret Service, Department of the Treasury (Parts 400-499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

SUBTITLE A—Department of Defense

I Office of the Secretary of Defense (Parts 1-499)

V Department of the Army (Parts 500-699)

VI Department of the Navy (Parts 700-799)

VII Department of the Air Force (Parts 800-1099)

SUBTITLE B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200-1299)

XVI Selective Service System (Parts 1600-1699)

XIX Central Intelligence Agency (Parts 1900-1999)

XX Information Security Oversight Office (Parts 2000-2099)

XXI National Security Council (Parts 2100-2199)

XXIV Office of Science and Technology Policy (Parts 2400-2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700-2799)

XXVIII Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1-199)

II Corps of Engineers, Department of the Army (Parts 200-399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)

Title 34—Education—Continued

SUBTITLE B—Regulations of the Offices of the Department of Education

Chap.

I Office for Civil Rights, Department of Education (Parts 100-199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200-299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400-499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)

VI Office of Postsecondary Education, Department of Education (Parts 600-699)

VII Office of Educational Research and Improvement, Department of Education (Parts 700-799)

VIII Office of Education for Overseas Dependents, Department of Education (Parts 800-899) [Reserved]

Title 35—Panama Canal

I Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1-199)

II Forest Service, Department of Agriculture (Parts 200-299)

III Corps of Engineers, Department of the Army (Parts 300-399)

IV American Battle Monuments Commission (Parts 400-499)

V Smithsonian Institution (Parts 500-599)

VII Library of Congress (Parts 700-799)

VIII Advisory Council on Historic Preservation (Parts 800-899)

IX Pennsylvania Avenue Development Corporation (Parts 900-999)

X Commission of Fine Arts (Parts 1000-1099)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1-199)

II Copyright Office, Library of Congress (Parts 200-299)

III Copyright Royalty Tribunal (Parts 300-399)

Title 38—Pensions, Bonuses, and Veterans' Relief

Chap.

I Veterans Administration (Parts 0-99)

Title 39—Postal Service

I United States Postal Service (Parts 1-999)

III Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1-799)

IV Low-Emission Vehicle Certification Board (Parts 1400-1499)

V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE A—Federal Procurement Regulations System

1 Federal Procurement Regulations (Parts 1-1—1-99)

3 Department of Health and Human Services (Parts 3-1—3-99)

4 Department of Agriculture (Parts 4-1—4-99)

5 General Services Administration (Part 5-1—5-99)

5A Office of Acquisition Policy, General Services Administration (Parts 5A-1—5A-99)

5B Office of Acquisition Policy, General Services Administration (Parts 5B-1—5B-99)

6 Department of State (Parts 6-1—6-99)

7 Agency for International Development, International Development Cooperation Agency (Parts 7-1—7-99)

8 Veterans Administration (Parts 8-1—8-99)

9 Department of Energy (Parts 9-1—9-99)

10 Department of the Treasury (Parts 10-1—10-99)

12 Department of Transportation (Parts 12-1—12-99)

13 Department of Commerce (Parts 13-1—13-99)

14 Department of the Interior (Parts 14-1—14-99)

14H Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-99)

14R Office of Water Research and Technology, Department of the Interior (Parts 14R-1—14R-99)

15 Environmental Protection Agency (Parts 15-1—15-99)

18 National Aeronautics and Space Administration (Parts 18-1—18-99)

19 International Communication Agency (Parts 19-1—19-99)

20 Nuclear Regulatory Commission (Parts 20-1—20-99)

22 Community Services Administration (Parts 22-1—22-99)

23 United States Arms Control and Disarmament Agency (Parts 23-1—23-99)

24 Department of Housing and Urban Development (Parts 24-1—24-99)

25 National Science Foundation (Parts 25-1—25-99)

80-152 O—82——15

Title 41—Public Contracts and Property Management—Continued

Chap.

28 Department of Justice (Parts 28-1—28-99)

29 Department of Labor (Parts 29-1—29-99)

34 Department of Education (Parts 34-1—34-99)

44 Federal Emergency Management Agency (Parts 44-1—44-99)

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-1—50-999)

51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-99)

SUBTITLE C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101-1—101-99)

105 General Services Administration (Parts 105-1—105-999)

109 Department of Energy (Parts 109-1—109-99)

114 Department of the Interior (Parts 114-1—114-99)

115 Environmental Protection Agency (Parts 115-1—115-99)

128 Department of Justice (Parts 128-1—128-99)

SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1-199)

III Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200-499)

II Bureau of Land Management, Department of the Interior (Parts 1600-9999)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0-399)

IV Department of Commerce and Department of Transportation (Parts 400-499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services (Parts 1-99)

SUBTITLE B—Regulations Relating to Public Welfare

Chap.

II Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)

IV Office of Refugee Resettlement, Department of Health and Human Services (Parts 400-499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)

VI National Science Foundation (Parts 600-699)

VII Commission on Civil Rights (Parts 700-799)

VIII Office of Personnel Management (Parts 800-899)

X Community Services Administration (Parts 1000-1099)

XI National Foundation on the Arts and the Humanities (Parts 1100-1199)

XII ACTION (Parts 1200-1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)

XVI Legal Services Corporation (Parts 1600-1699)

XVII National Commission on Libraries and Information Science (Parts 1700-1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800-1899)

XIX National Commission on the Observance of International Women's Year (Parts 1900-1999)

XXI Commission of Fine Arts (Parts 2100-2199)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1-199)

II Maritime Administration, Department of Transportation (Parts 200-399)

III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)

IV Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0-199)

II Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—[Reserved]

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)

SUBTITLE B—Other Regulations Relating to Transportation

Chap.

I Research and Special Programs Administration, Department of Transportation (Parts 100-199)

II Federal Railroad Administration, Department of Transportation (Parts 200-299)

III Federal Highway Administration, Department of Transportation (Parts 300-399)

IV Coast Guard, Department of Transportation (Parts 400-499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)

VI Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)

VIII National Transportation Safety Board (Parts 800-899)

IX United States Railway Association (Parts 900-999)

X Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)

III International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)

V Marine Mammal Commission (Parts 500-599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)

CFR Index and Finding Aids

Subject/Agency Index

List of CFR Titles, Chapters, Subchapters, and Parts

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

Alphabetical List of Agencies Appearing in the CFR

(As of September 30, 1981)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Acquisition Policy, Office of	41, 5A, 5B
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
Agency for International Development	22, II; 41, 7
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Federal Procurement Regulations System	41, 4
Food and Nutrition Service	7, II
Food Safety and Quality Service	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Inspector General, Office of	7, XXVI
Operations and Finance, Office of	7, XXX
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Statistical Reporting Service	7, XII
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI; 41, 23
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII

Agency	CFR Title, Subtitle or Chapter
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Chrysler Corporation Loan Guarantee Board	13, IV
Civil Aeronautics Board	14, II
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Defense	44, IV
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, IV
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commission on the Review of the National Policy Toward Gambling	1, IV
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services Administration	41, 22; 45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Council on Wage and Price Stability	6, VII
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Defense Civil Preparedness Agency	32, XVIII
Engineers, Corps of	33, II; 36, III
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Defense Manpower Commission	1, IV
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III

Agency	CFR Title, Subtitle or Chapter
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Procurement Regulations System	41, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employee-Management Relations Commission	22, VIII
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Energy Regulatory Commission	18, I
Federal Procurement Regulations System	41, 9
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 15, 115
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity	41, 60
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	41, 44; 44, I
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22,XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A
Federal Property Management Regulations	41, 101

Agency	CFR Title, Subtitle or Chapter
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Services Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Quality Service,	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	41, 5
Acquisition Policy, Office of	41, 5A, 5B
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Family Assistance, Office of	45, II
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
Public Health Service	42, I
Refugee Resettlement Office	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Interstate Land Sales Registration, Office of	24, IX
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	24, XX
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Solar Energy and Energy Conservation Bank	24, X

Agency	CFR Title, Subtitle or Chapter
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 41, 19
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water Research and Technology, Office of	41, 14R
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V; 41, 19
International Development, Agency for	22, II; 41, 7
International Development Cooperation Agency	22, II; 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Interstate Land Sales Registration, Office of	24, IX
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII

Agency	CFR Title, Subtitle or Chapter
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Worker's Compensation Programs, Office of	20, I
Labor Management Relations, Office of Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Emission Vehicle Certification Board	40, IV
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Science Foundation	45, VI; 41, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	29, XX
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I; 41, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III

Agency	CFR Title, Subtitle or Chapter
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Privacy Protection Study Commission	1, IV
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement Office	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Federal Procurement Regulations System	41, 6
Statistical Reporting Service, Agriculture Department	7, XII
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
Maritime Administration	46, II
National Defense	44, IV
National Highway Traffic Safety Administration	23, II; 49, V
Research and Science Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Administration, Assistant Secretary for	6, VI
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II

Agency	CFR Title, Subtitle or Chapter
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Metric Board	15, V
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Research and Technology, Office of	41, 14R
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

Redesignation Table No. 1

At 42 FR 52827, Sept. 30, 1977, Parts 246, 248, 249, 250, 251 and 252 were redesignated. The following table shows the relationship between the new structure and the old regulations.

CROSS-REFERENCE TABLE

Former part	New part
45 CFR 246	42 CFR 446
45 CFR 248	42 CFR 448
45 CFR 249	42 CFR 449
45 CFR 250	42 CFR 450
45 CFR 251	42 CFR 451
45 CFR 252	42 CFR 452
46 CFR 233	46 CFR 399

Redesignation Table No. 2

At 45 FR 56683, Aug. 25, 1980, Parts 205, 220, 222, 225, 226, 228, 229, and 231 were redesignated. The following tables show the relationship between the new structure and the old regulations.

CROSS-REFERENCE TABLE

Subchapter J

Former part	New part
45 CFR 205	45 CFR 1391
45 CFR 220	45 CFR 1392
45 CFR 222	45 CFR 1393
45 CFR 225	45 CFR 1391.51
45 CFR 226	45 CFR 1391.70, 1391.71
45 CFR 231	45 CFR 1392, Subpart E

Subchapter K

Former part	New part
45 CFR 228	45 CFR 1396
45 CFR 229	45 CFR 1397

REDESIGNATION TABLE FOR 45 CFR PART 205

Former section	New section
45 CFR 205.30	45 CFR 1391.2; for titles I, IV-A, X, XIV, XVI(AABD)
45 CFR 205.50	45 CFR 1391.3; for titles I, IV-A, X, XIV, XVI(AABD). 45 CFR 1396.10; for title XX
45 CFR 205.60	45 CFR 1391.4 [1]
45 CFR 205.70	45 CFR 1391.5 [1]
45 CFR 205.100	45 CFR 1391.6 [1]
45 CFR 205.101	45 CFR 1391.7 [1]
45 CFR 205.120	45 CFR 1391.8 [1]
45 CFR 205.130	45 CFR 1391.9 [1]
45 CFR 205.145	45 CFR 1391.10 [1]
45 CFR 205.150	45 CFR 1392.64; for titles IV-A and IV-B. 45 CFR 1393.89; for titles I, X, XIV, XVI(AABD). 45 CFR 1395, Subpart A for title XX
45 CFR 205.170	45 CFR 1391.11; for titles I, IV-A, X, XIV, XVI(AABD).
45 CFR 205.200	45 CFR 1391.50; for titles I, IV-A, X, XIV, XVI(AABD). 45 CFR 1396.8; for title XX
45 CFR 205.200	45 CFR 1392.10; for title IV-A. 45 CFR 1393.8; for titles I, X, XIV, XVI(AABD)

[1] For titles I, IV-A, X, XIV, XVI(AABD).

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," which is published in three separate volumes.

1973

45 CFR

38 FR Page

Chapter II

201.5 (e) added 26320
204.2 Added 16872
205.10 Revised, eff. 11-1-73 22007
205.20 Removed 22008
205.40 Revised 8744
205.41 Added 8744
205.70 Revised 26378
205.146 Added 26379
205.150 Revised 26804
206.10 Revised, eff. 10-15-73 22009
208.1 (b) revised 12112
220.1—220.24 Removed; provisions transferred to Part 221 10782
220.45—220.48 Removed; provisions transferred to Part 221 10782
220.50—220.52 Removed; provisions transferred to Part 221 10782
220.61 (a) through (f) removed; provisions transferred to Part 221 10782
220.63—220.64 Removed; provisions transferred to Part 221 10782
220.65 (a) removed; provisions transferred to Part 221 10782
220.75 Removed 26320
220.79 Revised 26320
220.81 Removed 26320
220.85 Added 26320
221 Added; provisions derived from Parts 220, 222, and 226 10782
Effective date postponed 19911

45 CFR—Continued

38 FR Page

Chapter II—Continued

221.5 (b)(2) amended 14376
221.6 (c)(3) (i) and (ii) revised 14375
221.8 (a)(2) revised 14376
221.54 (a)(2)(i) corrected 13563
(a) and (b)(1) revised 14376
222 Removed; provisions transferred to Part 221 10782
226 Removed; provisions transferred to Part 221 10782
233.10 (b)(1) revised 8744
(b)(5) removed; provisions transferred to 205.146(a) 26379
233.20 (a)(3)(ii)(*d*) removed; (a)(3)(ii)(*e*) redesignated as (a)(3)(ii)(*d*); (a)(12) added, eff. 10-15-73 22010
(a)(4)(ii) revised 25411
(d) revised 26379
233.40 Revised 26379
233.90 (b)(4) added 10940
(b) (2) and (3) added; (c)(1)(vi) revised 26916
233.100 (a)(1) revised 18549
(a)(1) corrected 26608
233.145 Revised 26379
234.75 Added 26380
234.120 Revised 26380
249.10 (b)(4)(i) heading and introductory text revised 12112
249.33 (a)(1)(vii) and (c)(2) revised 21413
252.10 (b)(1), (c)(2)(iii), and (d) revised 12112
252.20 Removed 12113

Chapter IV

401.69 Added 26321
401.77 (b) revised 26321

45 CFR—Continued

Chapter IV—Continued

		38 FR Page
403.9	Revised	26321
403.16	Added	26321
403.29	Revised	26321
403.33	Added	26321
403.49	Revised	26321
403.50	Added	26321
404.6	Added	26321
404.22	(c) and (k)(2)(ii) removed	26321
404.28	Removed	26321
404.48	Revised	26321
404.60	Revised	26321
404.93	Revised	26321
405.9	Added	26322
405.19	Revised	26321
406.5	Added	26322
406.19	Revised	26321
406.51	Revised	26321
408.10	Removed	26322
408.16	Added	26322
416.15	(b) amended	26322
416.16	Removed	26322
416.25	Revised	26322
416.38	Revised	26322
416.74	Amended	26322
416.75	Amended	26322
416.99	Revised	26322

1973–1974

45 CFR

Chapter II

		38 (39*) FR Page
201.0	*Added	8326
201.1	*(h) revised	34542
201.3	*Introductory text revised	34542
201.6	*(a)(1) and (b) introductory text revised	34542
204.1	*Revised	34542
205.5	*(a) and (b) revised	34542
205.10	*(a)(4)(i)(A), (5)(v), and (11) revised; (a)(4)(iv) added	12009
205.25	Added	34324
205.25	*Effective date changed to 7-1-74	3824
	*Effective date changed to 7-1-75	31322
205.30	*Revised	34543
205.35	*Added	4733
	*Effective date changed	5315, 9178, 10432
	*Revised	13887
205.50	*(a) introductory text revised	34543

45 CFR—Continued

Chapter II—Continued

		38 (39*) FR Page
205.60	*(a) introductory text revised	34543
205.70	*Introductory text revised	34543
205.100	*Revised	9513
	*(a) introductory text revised	34543
205.101	*Revised	16970, 34543
205.120	*Revised	16971
205.130	*Introductory text and (a) introductory text revised	34543
205.145	*Revised	34543
205.146	*(c) and (d) added	27906
205.150	*(a) introductory text revised	34543
205.190	*(a) introductory text and (a) (1) and (2) revised	2254
	*(a) introductory text revised	34543
205.200	*(a) revised	34543
206.10	(a)(6) revised	33380
206.10	*(a)(6) revised	1443
	*(a)(2) revised	12009
211	*Revised	26546
212	*Revised	26548
220	*Reinstated until 1-1-75 and amended	1443
220.48	*Revised	25489
	*Effective date changed to July 11, 1974	27799
220.60	Removed; provisions transferred to Part 221	30072
220.61	(a) through (f) removed; provisions transferred to Part 221	10782, 30072
	*(f)(1)(i) and (4)(v), (vi), and (vii) revised; (f)(5) added	25490
	*Effective date of (f)(1)(i), (4)(v), (vi), and (vii), and (5) changed to July 11, 1974	27799
220.65	(a) removed; provisions transferred to Part 221	30072
221	*Effective date postponed to 1-1-75	1443
222	Removed; provisions transferred to Part 221	30072
222	*Reinstated until 1-1-75 and amended	1443
225.2	*Introductory text revised	34543
225.3	*Revised	34543
226	Removed; provisions transferred to Part 221	30072

NOTE: Symbol (*) identifies changes published in 1974.

45 CFR—Continued

38 (39*) FR Page

Chapter II—Continued

226 *Reinstated until 1-1-75 and amended 1443
233.10 *(a)(1) amended 26912
233.20 *(a)(12) revised 22268
*(d) removed 34544
233.50 Revised 30259
Effective date corrected 31174
233.90 *(b) and (c) revised 34038
233.120 *(b)(2) revised 5316
233.145 (c) added 32912
234.130 *(a) introductory text and (c) revised 2220
237.50 Revised 32913
248.1 *Added 9513
248.2 *Added 9515
248.3 *Added 9516
248.4 *Added 9517
248.10 (a)(1), (b)(2)(ii) and (iv), and (d) (1) and (2) revised; (b) (3) and (4) redesignated as (b) (5) and (6); (b)(5) redesignated as (b)(7) and revised; new (b) (3) and (4) added 33380
248.10 *Introductory text added 9518
*(b)(4) revised 16971
248.11 *Existing text designated as (b); (a) added 9518
248.21 (a) revised; (b) redesignated as (c) and revised; new (b) added 33382
248.21 *(a) revised 5552
*Introductory text added 9518
248.30 (b)(1) revised 33382
248.30 *Revised 9518
248.50 Revised 30259
248.50 *Revised 9518
248.60 (a)(1), (2), and (3)(iv) revised 33383
Effective date corrected 31174
248.60 *(a)(1) revised; (b) (9) and (10) added 2221
248.70 *Revised 9518
248.80 *Revised 9518
*(c) corrected 10253
249.10 *(b)(14) and (c) revised; (b)(15) redesignated as (b)(17), new (b)(15) added; (b)(16) reserved; (d)(1)(iv), (v), and (vi) added 2221
*(b)(4)(i) revised 2257
*(b)(15)(i)(*e*), (ii) introductory text, (ii)(*a*), (iii)(*b*) and (d)(1)(vi) corrected 8918

NOTE: Asterisk (*) identifies changes published in 1974.

45 CFR—Continued

38 (39*) FR Page

Chapter II—Continued

*(a)(1), (2), (5), and (6) and (b)(7), (11), and (17) revised; (a)(9) removed; new (a)(9) and (10) added 16971
*(a)(3) revised 27906
249.11 *Redesignated as 249.20 2223
249.12 *Added 2223
*(a)(1)(ii)(B) and (9)(iii) and (c)(2) and (3)(v) corrected 8918
249.13 *Added 2226
*(c)(6)(ii)(C)(*1*) and (12)(ii)(E) corrected; (h)(i) through (x) correctly designated as (h)(1) through (10); (h)(10) revised 8918
249.20 *Redesignated from 249.11 and revised 2223
249.31 *Added 12866
249.32 *Revised 16972
249.33 *Revised 2254
*(a)(1)(i), (iii), (2), (4)(iii)(B), and (8)(i)(B) corrected 8918
*(a)(3)(i) revised 16972
249.40 *Revised 5553
249.41 *Revised 16972
249.81 Revised 33383
250.24 *Added 2234
*(a)(1) and (3)(v)(B) corrected 8918
250.30 *(a)(6) revised; (b)(3)(iii) added 2235
*(b) and (d) revised 21135
*(a) (2) through (7) redesignated as (a)(3) through (8); new (a)(2) added; (b) introductory text and (b)(1) revised 28288
*(b) revised 31639
250.70 *Added 16973
250.80 *Revised 7930
250.90 *Added 17763
*(b)(2)(ii) corrected 22269
250.100 *Added 2256
250.120 *Revised 16973
250.220 (Subpart C) *Added 31528
*(b)(4) corrected 32739
270 *Removed 11886

Chapter IV

401 *Revised 898
401.116 *(b)(2) added 7931
401.120—401.128 (Subpart E) *Added 25436
402 *Removed 898
403 *Revised 914
404 *Revised 918
405 *Revised 926

80-152 O—82——16

45 CFR—Continued 38 (39*) FR Page

Chapter IV—Continued

406 *Revised....929
407 *Revised....932
408 *Revised....933
410 *Added....24366

1974–1975

(Regulations published from October 1, 1974 through September 30, 1975)

45 CFR 39 (40†) FR Page

Chapter II

201.1 (h) corrected....36114
201.14 Added....†34597
(d)(12) and (13) correctly designated....†44326
205.25 Effective date postponed to 7-1-76....†33217
205.40 Revised....37195
Revised....†32957
205.41 Revised....37195
Revised....†32957
205.50 (a) revised; (b) redesignated as (d); (b) and (c) added....†27154
Effective date postponed....†31766
205.102 CFR correction....†4000
206.10 (a)(1)(iv) and (a)(9) revised; (a)(1)(v) added....†27660
(a)(9) and (b) revised....†32958
212.4(d) revised....†43218
213.21 Revised....40850
220 Effective date....45238
220.35 Removed; eff. 3-16-76....†43182
220.36 Removed; eff. 3-16-76....†43182
220.48 Removed....†27030
Effective date postponed....†31767
220.61 (f)(1) amended....38380
(f)(1)(i) revised....40157
221 Effective date....45238
Removed....43182
222 Effective date....45238
224 Added....†43182
226 Effective date....45238
228 Added....†27364
332 Added....†27154
Effective date postponed....†31766
233.10 (b)(3) revised; (b)(5) added....†32958
233.11 Removed....†43182
233.20 (a)(3) revised....†12507, 30965
(a)(3)(v) and (vi) revised; (b)(4) removed....†27156

NOTE: Asterisk (*) identifies changes published in 1974.

NOTE: Symbol (†) refers to 1975 page numbers.

45 CFR—Continued 39 (40†) FR Page

Chapter II—Continued

Effective date postponed....†31766
233.70 (a)(2) and (3), and (b)(1) revised....†25819
233.90 (b)(4) revised....†27156
Effective date postponed....†31766
233.140 Removed....38902
Added (reinstated)....†2435
234.60 (a)(1) revised; (a)(13) added....†27156
Effective date postponed....†31766
235.40 Added....†33035
235.70 Revised....†27156
Effective date postponed....†31766
237.60 Removed....†16667
248.3 (b)(5) and (c)(2) (i) and (ii) amended....36590
248.21 (a)(3)(ii) (A) and (B) amended....36590
248.70 (a)(2) and (3) and (c)(1) revised....†25819
249.10 (b)(6) revised....37637
(b)(4)(i)(B) revised; (b)(15)(vi) added....40019
(b)(1) and (14)(i)(A) revised....41611
(b)(1) and (14) effective date stayed....†14597
(b)(4)(i) revised....†43901
(c)(3) removed; (c)(4) added....†28793
249.33 (a)(1) amended....41611
(a)(1)(i) effective date stayed...†14597
(a)(7) removed....†28793
249.40 (a)(2) and (b) revised....36590
(a)(2)(ii) table corrected....39267
249.82 Revised....†20517
250.18 Added....41611
Effective date stayed....†14597
(a)(1)(iii) revised....†30819
250.19 Added....41612
Effective date stayed....†14597
(a) amended....†14597
(a)(1)(viii) effective date postponed....†28071, 33033, 33036
(c) added....†30819
250.20 Amended; (a)(3) added....35778
Revised....41617
250.23 Amended....41618
(a)(1)(ii) revised; (b)(2) removed; (b)(1) redesignated as (b); (c) added....41618
Effective date stayed....†14597
250.24 (a)(1)(ii) revised....41618
(a)(1)(ii) effective date stayed....†14597
250.25 Added....†27221
250.30 (b) and (d) revised....43632

45 CFR—Continued

39 (40†) FR Page

Chapter II—Continued
(b)(3)(iii) revised..... †14598
(b)(3)(iii) revised..... †15388
(b)(2) revised..... †34519
250.120 (d) amended..... 36590

Chapter III
Chapter added..... †27156
301 Added..... †27157
Effective date postponed..... †31767
301.1 (h) corrected..... †29723
302 Added..... †27159
Effective date postponed..... †31767
303 Added..... †27164
Effective date postponed..... †31767
304 Added..... †27166
Effective date postponed..... †31767

Chapter IV
401 Revised..... 42473
402 Added..... 42492
403—408 Removed..... 42504
409 Revised..... 42504

1975–1976

(Regulations published from October 1, 1975 through September 30, 1976)

45 CFR

40 (41Δ) FR Page

Chapter II
201.14 (f) added..... Δ42205
201.15 Added..... Δ7104
204.4 Added..... 51443
205.40 (c) added..... Δ12014
205.45 Added..... Δ23387
205.50 Revised..... 52375
205.102 Removed; eff. 12-7-76..... 37781
205.150 Revised..... Δ13584
205.160 Added..... Δ15330
205.200 Revised..... Δ7393
213.22 Revised..... 50272
213.23a Added..... 50272
220 Superseded in part by Part 228; applicability limited..... 45819
220.35—220.36 Superseded by Part 224..... 45819
220.61 (f) revised; eff. 12-7-76..... 33781
221 Removed..... 45819
222 Superseded in part by Part 228; applicability limited..... 45819
225.2 Introductory text revised..... 51444, Δ12015
225.3 Revised..... 51444

NOTE: Symbol (†) refers to 1975 page numbers.
NOTE: Symbol (Δ) refers to 1976 page numbers.

45 CFR—Continued

40 (41Δ) FR Page

Chapter II—Continued
226 Superseded in part by Part 228; applicability limited..... 45819
228.1 Amended..... Δ14167
228.33 (b) and introductory text of (c) revised..... Δ14167
228.60 (e)(2) revised; (i) added..... Δ14167
228.61 (b), (c), and (e)(3) revised..... 45819
(c) introductory text and (c)(1) revised..... Δ5635
(a), (d), (e) and (f) revised..... Δ14167
228.63 Revised..... 45819
Removed..... Δ20585
228.65 Revised..... Δ14167
228.70 (a) introductory text revised..... 45820
232.1 Revised; eff. 12-7-76..... 37781
232.10 (b) revised..... 52376
232.11 (a)(4) revised..... 52376
232.30 Added; eff. 12-7-76..... 37781
233.20 (a)(3)(ix) revised..... 50273
(a)(3)(ii) corrected..... 57359
(a)(3)(vi) corrected..... 58453
(a)(3)(vi) corrected..... Δ5284
(a)(5) removed; (a)(4)(ii), (11)(ii) and (iv) revised... Δ13357, 35678
(a)(3)(i) and (ii) revised..... Δ30647
(a)(3)(ii) corrected..... Δ35347
233.100 (a)(5)(ii) revised..... 50273
234.60 (b)(2)(i) revised..... 52376
237.50 (b)(1)(iii) revised..... 52376
248.1 (a)(3) added; (b)(3) revised..... 52020
(c)(iv) revised..... Δ22055
248.10 (b)(3) revised..... 52020
(b)(2)(iv) revised..... Δ22055
248.60 (a)(2) and (a)(3)(iv) revised..... Δ22055
249.10 (b)(16) added (c)(1) and (2) revised; (c)(5) added..... Δ2198
(a)(6)(iii) revised..... Δ22055
(a)(4) and (b)(7) revised; eff. 11-23-76..... Δ35848
249.12 (a)(1)(ii) and (c)(6) revised..... Δ12884
249.13 Introductory text revised..... Δ12885
249.20 Revised..... 52020
249.31 Revised eff. 10-26-76..... Δ36208
250.18 (f) redesignated from 250.20(b)(2) and revised..... Δ23673
250.20 (b)(2) revised and redesignated as 250.18(f)..... Δ23673

45 CFR—Continued

	40 (41Δ) FR Page
Chapter II—Continued	
250.23 Revised	Δ2200
(a)(1) introductory text, (i), and (iv) amended	Δ22055
250.30 (d) revised	52021
(b)(2)(ii) revised	54000
(b)(3)(ii) revised	Δ2201
Eff. date extended to 8-26-76	Δ16968
(a)(3) through (8) redesignated and revised as (a)(4) through (9); new (a)(3) added	Δ27305
(b) amended	Δ27307
250.80 (a)(5) revised	Δ13585
(a)(4) revised; (b) redesignated as (c); new (b) added	Δ26221
Chapter III	
302.16 Revised	57672
302.18 Added	52377
302.40 Added	52377
304.20 (a)(4) revised	Δ43150
304.27 Added	52377
304.28 Added	52377
304.30 Revised	Δ7105
Chapter IV	
401 Removed	54699
402 Removed	54699
410 Removed; provisions revised and transferred to Part 1370	58956, 58957
415 Redesignated from 42 CFR 54.1—54.7 (Subpart A)	Δ26908, 26911

1976–1977

45 CFR

	41 (42*) FR Page
Chapter II	
201.3 Nomenclature change	*43977
201.4 Nomenclature change	*43977
201.14 (b)(1) revised	*51583
Nomenclature change	*43977
201.15 (c) revised	*51583
201.66 Added	*28884
205.40 (a) introductory text, (b)(3)(iv), and (c) revised; eff. 7-1-75	*14718
Revised	*37207
205.41 Removed; eff. 7-1-75	*14719
205.50 (a) CFR correction	*12046
205.146 (d) redesignated as (e); new (d) added	55346

NOTE: Symbol (Δ) refers to 1976 page numbers.
NOTE: Asterisk (*) identifies changes published in 1977.

45 CFR—Continued

	41 (42*) FR Page
Chapter II—Continued	
205.150 Nomenclature change	*43977
205.160 Nomenclature change	*43977
205.200 (a) amended	*33293
224 Revised	47688
228 Revised	*5848
228.24 (a)(3) revised; (b) added	55670
228.26 (a) and (c) amended; (f) added	55671
228.29 (c) added	55671
228.35 (c) added	55671
228.40 (c) added	55671
228.41 (d) added	55671
228.42 (c) and (d) added	55671
228.44 (b) added	55672
228.48 Added	55672
228.51 (c) added	55672
228.52 (c)(3) added	55672
228.55 Removed	55672
228.56 (b) revised	55672
228.60 (d) revised; (e)(2)(i) republished; (e)(2)(ii) added	55672
228.61 (a), (c) and (d) revised	55672
228.63 Added	55673
228.100—228.102 (Subpart J) Added	55673
231 Added	*5980
233.20 Technical correction	47065
(a)(1) and (3)(vi) and (x) revised	54489
(a)(3)(vi) corrected	56646
(a)(2)(iv) revised; (a)(2)(viii) added	*6584
Technical correction	*13292
(a)(3)(ii)(B) and (a)(3)(ix) revised	*16145
(a)(2)(vii) removed; (a)(4)(ii) revised	*26427
233.90 (a) revised	*3307, 6584
233.100 (a)(5)(i) and (ii) revised	*16145
235.40 Added; effective date extended to 7-1-76	*17877
246 Redesignated as 42 CFR Part 446	*52827
246.160 Added	*33293
248 Redesignated as 42 CFR Part 448	*52827
248.3 (b)(1), (2), and (3) revised; (b)(4), (5), and (6) redesignated as (b)(7), (8), and (9); new (b)(4), (5), and (6) added	*2686
248.21 (a)(2) revised	*2687
249 Nomenclature change	*43977
Redesignated as 42 CFR Part 449	*52827

45 CFR—Continued

41 (42*) FR Page

Chapter II—Continued

249.10 (d)(3) added *4125
(b)(15)(i)(D) revised *15064
249.12 (c)(6) revised *15064
(c)(3)(ix) added *23702
249.13 Introductory text revised *15064
(b)(6)(i) and (xi) revised *28703
249.33 (a)(8) and (a)(8)(i)(B) revised *15064
(a)(2), (a)(4)(iii) introductory text and (A), (iv) introductory text, and (5)(iv) revised; (a)(8) removed *28703
249.82 Effective date changed to 8-9-76 ..... *51584
250 Nomenclature change *43977
Redesignated as 42 CFR Part 450 ..... *52827
250.25 Revised *37208
250.30 (a)(2)(i) and (iii) and (b)(1) revised 51402
(a)(3)(iii)(B)(*1*) and (*4*), (a)(3)(iv) introductory text and (A) amended 53994
(a)(3)(iii)(B)(*1*) and (*4*), (a)(3)(iv) introductory text and (A) corrected *779
(d)(2) revised *46537
250.70 (a)(2) amended *43977
250.210 Added; interim rule effective date 12-31-72 48738
Added; final rule *23509
251 Redesignated as 42 CFR Part 451 ..... *52827
252 Nomenclature change *43977
Redesignated as 42 CFR Part 452 ..... *52827

Chapter III

302.39 Revised 55348
303 Heading revised 55348
303.0 Revised 55348
304.25 Revised *26427
304.29 Added *3843
304.40 Added *28885
305 Added 55348

Chapter IV

409 Removed *15810
416 Removed *5276

NOTE: Asterisk (*) Identifies changes published in 1977.

1977–1978

(Regulations published from October 1, 1977, through September 30, 1978)

45 CFR

42 (43†) FR Page

Chapter II

201.14 (a) revised; Appendix added ..... †9266
205.40 (b)(2)(iv) and (d) revised ..... †2631
205.202 (a) amended; (c)(4) removed 60566
(c)(4) correctly designated ..... †20009
206.10 (a)(1) and (2)(i) revised ..... †6950
225.2 Amended 60566
225.3 Amended 60566
228 Effective 1-31-77 in part 61268
228.20 (a) revised 61267
228.26 (a) revised; (i) redesignated as 228.30(c) 61267
228.29 (a) and (b) revised ..... †4019
228.29-a Added ..... †4020
228.30 Revised 61267
228.33 (g) introductory text added (9), (h) introductory text added (10), and (i) revised ..... †4020
228.39 Correctly added 61267
228.42 (c) and (d) revised 61267
(c)(2) effective in part 9-7-76 to 9-30-77 61269
228.51 (c) introductory text revised 61267
228.52 Effective in part 7-1-76 to 9-30-77 61269
228.61 (a)(1) through (3) and (b) through (d) revised 61267
228.70 (d) effective in part 10-1-75 61268
228.92 Added ..... †4582
Republished ..... †4844
228.100 Revised 61268
229 Added ..... †4020
232.12 Revised ..... †2176
232.13 Added ..... †2176
Clarification ..... †15425

Chapter III

302.31 Revised ..... †2180
302.35 Revised ..... †33248
302.52 Introductory text, (a) and (b) revised 55818
302.70 Revised ..... †33249
303.3 Revised ..... †33249
304.20 (a)(4) revised ..... †29787
304.21 Revised ..... †33250

NOTE: Symbol (†) refers to 1978 page numbers.

1978–1979

(Regulations published from October 1, 1978 through September 30, 1979)

45 CFR — 43 (44Δ) FR Page

Chapter II
Chapter heading revised....45585
201.14 Determination....Δ19248
205.10 (a) introductory text, (5), (11), and (12) revised; (a)(4)(ii)(H) removed....Δ17941
(a)(5) amended....Δ26082
205.30 Revised....Δ17941
205.35 Removed; regulations transferred to 42 CFR Part 441 and revised....52174
205.41 Added....Δ12584
Policy statement....Δ12578
205.50 (b) removed....Δ17941
205.60 (a) introductory text and (1) revised....Δ17941
205.70 Introductory text revised....Δ17941
205.100 (a)(1) introductory text revised; (a)(2) removed....Δ17941
205.101 (a) revised; (c) removed....Δ17942
205.120 (a) introductory text revised; (b) removed....Δ17942
205.130 (a) introductory text revised; (c) removed....Δ17942
205.145 Introductory text revised....Δ17942
205.146 (c) revised....Δ29427
205.150 (a) introductory text, (a)(1) introductory text, and (i) and (b) revised....Δ17942
205.160 (a) introductory text and (b) revised....Δ17942
(a) introductory text revised....Δ20432
Technical corrections....Δ23528
205.170 Introductory text revised....Δ17943
205.190 (a) (1) and (2) revised....Δ17943
Technical correction....Δ37610
206.10 (a) revised....Δ17943
(a)(1)(vi) added; (a)(4) amended....Δ26082
208.1 (a) introductory text, (5), and (b)(2) revised....Δ17944
220 Authority citation revised....Δ6718
220.21 Revised....Δ52174
Effective date stayed to 3-8-79....Δ5665
(b) revised....Δ6713

NOTE: Symbol (Δ) refers to 1979 page numbers.

45 CFR—Continued — 43 (44Δ) FR Page

Chapter II—Continued
220.66 Added....Δ20432
Technical corrections....Δ23528
222 Authority citation revised....Δ6718
222.59 Revised....Δ52174
Effective date stayed to 3-8-79....Δ5665
(b)(1) revised....Δ6718
222.92 Added....Δ20432
Technical corrections....Δ23528
228 Authority citation revised....Δ6718
228.4 Added....Δ41648
228.5 Redesignated from 228.6....Δ41648
228.6 Redesignated as 228.5; new 228.6 redesignated from 228.7....Δ41648
228.7 Redesignated as 228.6; new 228.7 redesignated from 228.8....Δ41648
228.8 Redesignated as 228.7; new 228.8 redesignated from 228.9....Δ41648
228.9 Redesignated as 228.8; new 228.9 added....Δ41648
228.19 Revised....Δ41648
228.29 (b)(3) removed; (b)(4) redesignated as (b)(3)....Δ16400
(b)(3) technical correction....Δ20088
228.40 (c) removed....Δ16400
(c) technical correction....Δ20088
(d) added....Δ41648
228.41 (e) removed....Δ16400
(e) technical correction....Δ20088
228.42 (d) and introductory texts of (c), (c)(1), and (c)(2)(i) revised....Δ16400
(c)(1) and (2), and (d) technical correction....Δ20088
228.44 (e) removed....Δ16400
(e) technical correction....Δ20088
228.51 (c) revised....Δ16400
(c) technical correction....Δ20088
228.52 (b) removed; (c) through (f) redesignated as (b) through (e); new (b) revised....Δ16400
(b), (c), and (d) technical correction....Δ20088
228.56 (b)(3) removed....Δ16401
(b)(3) technical correction....Δ20088
228.63 Revised....52174
Effective date stayed to 3-8-79....Δ5665
228.70 (a) introductory text and (14) added....Δ41648

45 CFR—Continued

43 (44Δ) FR Page

Chapter II—Continued

228.72 Added..... Δ41648
228.73 Added..... Δ41650
228.90 (b)(2) revised..... Δ41650
228.92 Revised..... Δ6718
228.93 Added..... Δ20431
Technical corrections..... Δ23528
228.100—228.102 (Subpart J) Removed..... Δ16401
Technical correction..... Δ20088
232.12 (a) introductory text revised..... 45747
232.13 Removed..... 45747
232.40 Revised..... 45748
232.41 Revised..... 45748
232.42 Revised..... 45748
232.43 Revised..... 45749
232.44 Revised..... 45749
232.45 Revised..... 45749
232.46 Revised..... 45750
232.47 Revised..... 45750
232.48 Revised..... 45750
232.49 Revised..... 45750
232 Appendix A revised..... 45750
233.20 (a)(4)(ii)(*m*) added..... 45586
(b)(4) added..... Δ26082
233.21 Added..... Δ26082
233.22 Added..... Δ26082
233.23 Added..... Δ26083
233.24 Added..... Δ26083
233.25 Added..... Δ26083
233.26 Added..... Δ26083
(a)(1) corrected..... Δ29065
233.27 Added..... Δ26083
233.28 Added..... Δ26083
233.29 Added..... Δ26084
233.40 Revised; interim..... Δ41460
233.90 (a) revised..... Δ12424
280 Removed..... Δ22727
282 Added..... 53730

Chapter III

302.19 Added..... Δ28803
(a) corrected..... Δ45137
302.20 Added..... Δ28803
302.31 Revised..... 45752

Chapter IV[1]

Chapter removed..... Δ22728
415 Removed..... Δ22728

NOTE: Symbol (Δ) refers to 1979 page numbers.

[1] At 42 FR 13262, Mar. 9, 1977 the chapter heading was revised. The regulations contained in Chapter IV were removed at 42 FR 5276, Jan. 27, 1977; 42 FR 13262, Mar. 9, 1977 and 44 FR 22728, Apr. 17, 1979.

1979–1980

(Regulations published from October 1, 1979, through September 30, 1980)

45 CFR

44 (45*) FR Page

Chapter II

Chapter II Chapter heading revised; nomenclature changes..... *53806
205.10 (a)(4), (5), and (6)(i) revised..... *20480
205.30 Revised..... *56684
205.41 Heading, (a)(1), (d)(1), and (f) revised; (a)(3) added..... *6333
Policy statement..... *6326
205.42 Added..... *6333
Policy statement..... *6326
205.43 Added..... 67422
205.50 (a)(2)(i)(B) and (3) revised..... 75146
Revised..... *56684
205.51 Added..... 75147
205.56 Added..... 75147
205.57 Added..... 75147
205.58 Added..... 75147
205.60 (a)(1) amended; (a)(2) redesignated as (a)(3); new (a)(2) added..... 75147
Revised..... *56685
205.70 Introductory text and (a) revised..... *56685
205.100 Revised..... *56685
205.101 Revised..... *56686
205.120 (a) introductory text revised..... *56686
205.130 Revised..... *56686
205.145 Removed..... *56686
205.150 (a)(1)(i) and (2) revised..... *56686
205.170 Introductory text revised..... *56686
205.190 (a) introductory text, (1) and (2) introductory text revised..... *56686
205.200 Introductory text added; (a) revised..... *25398
Removed; regulations transferred to 1391.50..... *56686
205.202 Introductory text added; (a) introductory text revised..... *29833
Removed; regulations transferred to 1392.10 and 1393.8..... *56686

NOTE: Symbol (*) refers to 1980 page numbers.

45 CFR—Continued

44 (45*) FR Page

Chapter II—Continued

206.10 (a)(5) revised....75147
220 Editorial note revised....*48145
Removed; regulations transferred to Part 1392, Subparts A through D....*5691
220.1 Revised....*48145
220.21 (b) revised....*61599
220.46 Revised....*48145
220.47 Revised....*48145
220.50 Revised....*48145
220.51 (a) and (e) revised....*48146
220.64 Revised....*48146
220.65 Revised....*48146
220.72 Removed....*48146
220.74 Revised....*48146
220.76 Removed....*48146
220.79 Removed....*48146
220.80 Revised....*48146
220.85 Removed....*48146
222 Authority citation revised....61600
Redesignated as Part 1393 and revised....*56701
222.1 Revised....*48147
222.10 Revised....*48147
222.59 (b)(1) revised....61600
222.89 Revised....*48147
222.90 Revised....*48147
222.91 Removed....*48147
224.51 (a) and (c) revised; (b) and (d) redesignated as (e) and (f); new (b) and (d) added....*27422
224.63 (a) and introductory text of (b) revised; (b)(3) through (7) redesignated as (b)(2) through (8); new (b)(2) added; new (b)(3) revised....*27422
224.65 (a) revised....*27423
224.68 (a)(5) revised; (b) and (c) redesignated as (c) and (d); (a)(6) and new (b) added....*27423
224.77 (a) revised....*27423
225.2 Introductory text and (a)(1) revised....*56686
225.3 Revised....*56686
226 Removed; regulations transferred to Part 1391, Subpart D....*56687
228 Authority citation revised....61600
Redesignated as Part 1396 and revised....*56707
228.1 Amended....*48147
228.5 (f) revised....*48147
228.17 Revised....*48148
228.40 (d) revised....*55383

45 CFR—Continued

44 (45*) FR Page

Chapter II—Continued

228.53 Revised....*48148
228.54 Removed....*48148
228.70 Introductory text revised....*13468
Introductory text and (a) introductory text, (1) through (5), and (13) revised....*48148
228.71 Revised....*48148
228.72 (a)(10), (11), and introductory text of (12) revised....*55383
228.90 Revised....*48149
228.911 Revised....*48149
228.92 Revised....61600
229 Redesignated as Part 1397 and revised....*56728
231 Removed; regulations transferred to Part 1392, Subpart E....*56691
233.20 (a)(3)(ii)(E) revised....*45912
233.40 Revised....*26962
233.90 (c)(1)(iii) revised....*58126
234.60 Heading, (a)(1) through (4), (7), (9), (10)(ii) and (11)(i), and (b) revised....*20480
235.50 Added....*25398
235.60—235.66 Added....*29833
260 Added; interim....*36821

Chapter III

Chapter III Chapter heading revised; nomenclature changes....*53806
302.35 (c)(1) revised....*8987
302.50 (e) added....*8987
302.80 Added....*8987
304.20 (a)(4) revised....*41428
304.21 Effective 7-1-75....56939
304.23 (g) added....*8987
306 Added....*8987

Chapter IV

400 Added....*59323

1980–1981

(Regulations published from October 1, 1980 through September 30, 1981)

45 CFR

45 (46†) FR Page

Chapter II

201 Authority citation....†48003
201.5 Introductory text revised....†48003
205.10 (a)(5) revised; interim....†46762

NOTE: Symbol (*) refers to 1980 page numbers.

45 CFR—Continued

Chapter II — 45 (46†) FR Page

205.35 Added; interim.....†47786
205.36 Added; interim.....†47787
205.37 Added; interim.....†47787
205.38 Added; interim.....†47788
205.80 Added; interim.....†46763
206.10 (a)(1)(vi) removed; (c)(4) revised; interim.....†46763
224.20 (b) (2), (8), and (9) revised; (b)(11) added; interim.....†46779, 46806
224.22 (b) revised; interim...†46779, 46806
224.51 (a) (2) and (3) redesignated as (a) (3) and (4); new (a)(2) added; interim...†46779, 46806
233.10 (b)(2)(ii)(*a*)(*1*) revised; interim.....†46763
233.20 (a)(3)(ii)(E) grace period extended.....†4919
(a)(2)(v); (3) (i), (ii) (B), (D), (E) and undesignated paragraph following (E), (iii), (viii), (4)(i), (a)(7) introductory text and (ii), (11), and (12) heading revised; (a)(3)(xi) through (xiii), (6)(ix), and (13) added; interim .....†46763
(b)(2) revised; (b)(4) removed; interim.....†46766
233.21 Heading and (a) revised; interim.....†46706
233.30 Redesignated as 233.39; interim.....†46766
233.31 Added; interim.....†46766
233.32 Added; interim.....†46766
233.33 Added; interim.....†46766
233.34 Added; interim.....†46766
233.35 Added; interim.....†46767
233.36 Added; interim.....†46767
233.37 Added; interim.....†46767
233.39 Redesignated from 233.30; (b)(1)(ii) revised; interim.....†46766
233.50 Revised; interim.....†46767
233.51 Added; interim.....†46767
233.52 Added; interim.....†46768
233.90 (a)(1), (b)(3) revised; (c)(1)(vi) and (2)(ii) removed; (c)(2) (iii) and (iv) redesignated as (ii) and (iii); new (c)(2)(iv) added; interim.....†46768
233.100 Heading, (a) introductory text and (1) introductory text, (3) (i), (ii) introductory text and (*c*), (iv), and (5)(i) revised; (a)(3)(vi) added; (a)(1)(ii), (2), (3)(ii)(*b*), (iii), (5)(ii), (6), (7), (c)(1) (iii) through (v), and (2) (i) through (iii) amended; interim.....†46769
233.106 Added; interim.....†46769
233.140 Removed; interim.....†46770
234.60 (a)(1) revised; (a)(14) added; (a)(12)(b)(1) amended; (a)(5), (11)(iii), and (b)(2) removed; interim.....†46770
235.62 Introductory text corrected.....†29264
235.64 Introductory text revised; footnote removed; interim.....†46770
238 Added; interim.....†46770
239 Added; interim.....†46772
260 Revised.....66685

Chapter ...—Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services

Chapter III

302.85 Added; interim.....†47793
303.65 Added; interim.....†47794
303.66 Added; interim .....†47795
303.67 Added; interim.....†47795
304.20 (a) revised.....†1276
304.26 Revised.....†6949
304.90 Added; interim.....†47795
304.91 Added; interim.....†47796
306.10 (j) corrected.....74485

Chapter IV

Chapter established.....64926

1981

(Regulations published from October 1, 1981 through October 30, 1981)

45 CFR

Chapter II — 46 FR Page

205 Technical correction 50797
224.1 Amended; interim 48613
Amendments republished 48652
224.16 (b) revised; interim 48613
(b) revision republished 48652
224.20 (a) and (c)(4) revised; (b)(10) added; interim 48613
(a) and (c)(4) revision and (b)(10) addition republished 48652
224.21 (a)(5) revised; interim 48614
(a)(5) revision republished 48652

NOTE: Symbol (†) refers to 1981 page numbers.

45 CFR—Continued

Chapter II

46 FR Page

224.22 (e) revised; (f) and (g) redesignated as (g) and (h); new (f) added; interim 48614
Revision, redesignations, and addition republished 48652
224.30 (a), (b)(2) and (3), and (e) revised; (b)(5) removed; interim 48614
Revisions and removal republished 48653
224.32 Revised 48614
Revision republished 48653
224.34 (a) revised; interim 48614
(a) revision republished 48653
224.41 Revised: interim (effective pending OMB review) 48615
Revision republished 48653
224.50 (e) revised; (h) added; interim 48615

45 CFR—Continued

Chapter II

46 FR Page

(e) revision and (h) addition republished 48653
224.51 Revised: interim 48615
Revision republished 48654
224.63 (a) revised; (b)(2) removed; (b)(3) redesignated as (b)(2) and revised; (b)(4) through (8) redesignated as (b)(3) through (7) and republished; interim 48615
Revisions, removal, and redesignations republished 48654
224.76 Removed; interim 48616
Removal republished 48654
233.20 Amendatory language corrected 50372
233.100 Amendatory language corrected 50372
260 Removed; interim 48598